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December 6, 1994

BY TELECOPY AND FIRST CLASS MAIL

John M. Sipple, Jr., Esq.
Assistant Director
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 308
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

DEC 6 2 45 PM '94
FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION

Dear John:

I am writing in response to your offer in our telephone conversation last Friday (December 2, 1994), to provide your views regarding the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act" or the "Act") to a particular transaction we are analyzing. This letter is not being written under the Commission's advisory opinion procedure. Instead, I am writing in the hope and understanding that we want your comments from you withing four

it should be reportable under the Act. Please let me know promptly if you disagree with our analysis or conclusions in any way because the parties are on a tight schedule and plan to close in the very near future.

A married couple (the "Owner") currently holds directly or indirectly

100% of the...
other instances, the Owner holds the 1% general partnership interest through a partnership or corporation which is wholly owned by the Owner. The only assets of some of the partnerships are residential properties for senior citizens. The only holdings of the remaining partnerships are partnership interests in other partnerships, the assets of which consist solely of similar residential buildings. In

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the case of one such partnership, the assets consist in part of partial, non-

and similar additional services. The residences do not have a hospital, doctors, a pharmacy, a grocery store, or any other retail establishment on the premises. Each residence generally has a nurse, however, to handle basic procedures such as blood tests. The staff at each residence also provides some "assistance with the activities of daily living" such as storing and dispensing medication to residents on a doctor's orders and bathing, feeding, and counseling residents. All such services are

MRS. W. J. 3059 S/C
OR 3361 Res. listed

corporations. The only "assets" of a number of these corporations are real estate

and a minority partnership interest in partnerships which own such residences

by the Owner. The only "assets" of another corporation are land purchase and development contracts for the types of residence at issue and minority general partnership interests in partnerships which own such types of residences. The only "assets" of another corporation are partnership or other ownership interests in partnerships which own the same types of residences. The only assets of the

The Owner is planning to undertake the following multi-step

First, the Owner will create

exemption of section 802.30 of the HSR regulations and particularly Example 2 to that section.

[REDACTED]

[REDACTED]

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partnerships consist entirely of residential property, of assets incidental to the ownership of such property or of interests in partnerships whose only assets are

partnerships should be exempt from the requirements of the HSR Act under Section 710(1) of the HSR Act and section 802.1 of the HSR regulations. Similarly, the Owner's acquisition of additional voting securities of Newco should be exempt under section 802.1(a) of the HSR regulations, since Newco's only assets following this step consist or will consist of real property and incidental assets.

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of assets to
for HSR purposes
in this case.
This the Owner will transfer its 100% stock ownership in its real
additional Newco voting securities. The Owner is both the acquired and acquiring person by reason of holdings of voting securities, because it is the ultimate parent entity of the corporations it is transferring to Newco and of Newco. Accordingly, this transaction should be exempt from the reporting requirements of the HSR Act under the intraperson transaction exemption of section 802.30 of the HSR regulations.

OK
Fourth, a number of investors will invest capital in Newco in exchange for Newco voting securities. Each investor is investing substantially less than \$15 million and, as a result of the investment, no investor will control an issuer which, together with all entities it controls, has annual net sales or total assets of \$85 million or more.

OK
All of the above steps could occur in succession on one day, although the first step (formation of Newco) is expected to occur several days before the second and succeeding steps. It is essential from the investors' perspective, however, that the first three steps be completed before the fourth step occurs.

OK
If investors had been identified and are contemporaneously committed, it is a formation
Sec 802.1(a) 199
for criteria
P no has used
not
Have they been identified?

For the reasons indicated above, we do not believe that the Owner's formation of Newco and transfer to Newco of its partnership interests and of the voting securities of its corporations in exchange for Newco stock should be reportable under the HSR Act. Similarly, we do not believe that the investors' subsequent acquisition of Newco voting securities should be reportable. Please let us know as soon as possible whether you agree. Because time is of the essence, we

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would welcome the opportunity to respond to any questions or concerns you may have in person or by telephone.

Thank you in advance for your attention and assistance.

[REDACTED]

Reputability depends on whether this plan is viewed as the formation of a joint venture corporation and subject to § 801.40. If the [REDACTED] items 4 [REDACTED] identified and are contractually

committed to invest in Newco, the PNO would view the [REDACTED]

The call to HFD [REDACTED] PNO has used to distinguish formation of joint ventures from the formation of a Newco and the subsequent sale of ops in Newco (Non § 801.40) [REDACTED] § 801.40)

[REDACTED] of Newco would qualify for exemption under § 802.11(a), or answer the call that if the facilities being transferred to Newco were residential not nursing homes, the exemption was applicable. I asked the caller to determine whether the facilities fell under SIC code 8059, Nursing & Personal Care facilities, or § 801.61 Residential Care, both latter and the other nearby codes.

[REDACTED]