





## 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

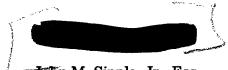
## Dear John:

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 advicery opinion-precedures. Instead, I am writing in the hope and understanding that we may get a response from requirities for the

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

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



John M. Sipple, Jr., Esq. December 6, 1994 Page 2

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

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

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

and a minority narrnership 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 martnership interests in partnerships which own such types of residences. The only "assets" of another corporation are partnership or other ownership interests in the corporation are partnership or other ownership in the corporation are partnership in the corporation are partnership in the corporation are partnership in the corporation are partnership

The Our is alanning to undertake the following multi stan

River the O-man will and the owner of the owner owner of the owner own

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

John M. Sipple, Jr., Esq. December 6, 1994 Page 3

partnerships consist entirely of residential property, of assets incidental to the

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.

Third the Owner will the acquired and acquiring securities. The Owner is both the acquired and acquiring

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.

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,

All of the above steps could occur in succession on one day, although of 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.

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

John M. Sipple, Jr., Esq. December 6, 1994 Page 4

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

There is advance for more attention and assistance



Reportability depends on whether this plan is received no the furnition of a joint virtues corporation and publish to \$ 801.40. If the

committed to work on 10 mes, witho work round in a p

pro has used to distinguish farmations of just venturing from 801.40 the provoter of a Newco and the publiquent sole duken Newco (Non 801.40)

of piwes would quelyy for therepren made & 80 3.1(a), or amount no cover that if the facilities bring transferred to New co were weitherful not many homes, the memphons was applicable. I asked the coller to dillerming whather the facilities fell and SIC cook 80 51, Newsong & Personal Care facilities, Mr. 5, 3 61 Residented Care. It she letter, had the other ocation assotts.

