

70/101 - 1511

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October 20, 1995

**VIA FEDERAL EXPRESS**

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OCT 23 1 12 PM '95  
FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

Dear Mr. Smith:

The purpose of this letter is to confirm our telephone conferences on October 5, 1995 and October 12, 1995 relating to the Federal Trade Commission (FTC) staff.

factual assumptions, as we discussed them, are as follows:

Person A is a recently-formed corporation that intends to qualify as a REIT for federal income tax purposes under the Internal Revenue Code. A's intention to qualify as a REIT is evidenced by: (a) A's articles of incorporation which contain the requisite REIT provisions; (b) A's filing of a registration statement with the Securities and Exchange Commission ("SEC"), which states that A intends to operate so as to qualify as a REIT for federal income tax purposes; and (c) A's obtaining of a tax opinion stating that A will qualify as a REIT.

Through wholly-owned subsidiaries, A holds approximately 94.6% of the

FOIA(b)(7) - (D) IS THE ONLY METHOD OF OBTAINING THIS INFORMATION

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the partnership.

In our telephone conversations, you related the FTC staff's interpretation that all acquisitions where the ultimate parent entity of the acquiring person is a REIT are covered by the Ordinary Course of Business Exemption. You also indicated that an acquisition by an acquiring person whose ultimate parent entity is a REIT but which

the exemption applies where the REIT is the acquiring person.

You therefore concluded that the hotel acquisition described above would be exempt from the reporting requirements of the Act pursuant to the Ordinary Course of Business Exemption.

Please call either [REDACTED]

Very truly yours  
[REDACTED]

10/24/95 - Advised co-author that letter reflects position of Premerger Office concerning realty purchases by REITs which have not yet qualified with IRS. Noted that should REIT 1 fail to do so the anticipated REIT exemption is lost and a violation filing would need to be made.  
PBJ/mth