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KATHRYN

Thank you,

KATHRYN
WALSH:

Thank you, Tara. So starting just with a bit of background, Congress created REITs and gave them special tax treatment based on their use as a means of passive investment in real estate. For a long time, the PNO has taken the informal position that when a REIT acquires real property and, of course, assets incidental to the real property, the acquisition is exempt from HSR reporting under the Hart-Scott-Rodino Act. If a REIT acquires real property, the acquisition is exempt from HSR reporting under the Hart-Scott-Rodino Act.

As they evolved, non-corporate entities began to acquire interests in other corporate and non-corporate entities. The Commission addressed this evolution in 2005 when it changed the reporting requirements so that the acquisition of control, or 50% or more of the non-corporate entity, is reportable.

But non-corporate entities continued to evolve even since 2005. Now the acquisition of non-corporate interests are often captured in securities purchase agreements, and non-corporate interests are deemed to be like voting securities.

We would like to know whether and how non-corporate entities and non-corporate interests have evolved since 2005. It would help us to know how to evolve our

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TARA KOSLOV: And then we were asked, are you considering changing the definition of voting securities to deal with the fact that non-corporate entities don't have boards of directors?

KATHRYN WALSH: So we are considering whatever changes make sense in terms of the way non-corporate entities function, and we would love input. Thank you. More comments, please.

TARA KOSLOV: Our enduring theme. More comments. Lots of comments. All the comments. OK, we're going to move on to our focus toLoz

TARA KOSLOV: So here are some questions that we received about the definition of institutional investors. So the first question is, in light of the aggregation proposal, is there any thought to increasing the 802.64 exemption amount for a mutual aggregation

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waiting until there has been further analysis of common ownership before implementing rule changes aimed to address common ownership? In considering the potential benefits and burdens of any rule changes, should the common ownership analysis be allowed to develop further before investors that have been relying on the investment only and institutional investor exemptions are potentially forced to submit an extensive number of additional filings?

KATHRYN WALSHP: S?

TARA KOSLOV: All right, let's see. Here's our next question. Investors are allowed to file SEC form 13D and 13G after the acquisitions have closed, which permits efficient securities markets. Given that minority acquisitions do not involve integration of assets and there is no need to unscramble the eggs in consummated transactions, is the FTC considering whether non-suspensory filings would be appropriate for acquisitions of small minority interests?

KATHRYN WALSHP: Well, in enacting HSR, Congress made the determination that the filing should be made and a waiting period observed before the acquisition occurs, even with regard to small minority interests where no exemption applies. Even though the acquisition of stock may not involve a scrambling of assets, it does give the holder rights as a shareholder to certain information as well as voting power, which may, of course, have competitive implications.

the voting rights do indirectly.

TARA KOSLOV: So here's a question we received. The ANPRM asks questions about cumulative voting. Why is cumulative voting relevant to our consideration?

KENNETH LIBBY: In order to answer that, I want to take a minute to explain how cumulative voting works. Let's say for simplicity's sake that the issuer has 100 shares outstanding, and the acquirer owns 10 shares, representing a 10% stake. Also assume that the board has 10 members.

Now under straight voting, the acquirer can cast no more than one vote for any director.

sheet of the issuer. In some cases, this can cause the issuer to fall below the size of person test. And as a result, the acquisition is no longer subject to the reporting and waiting period requirements. Accordingly, we've asked a number of questions about when and how these dividends are issued and the reasons behind issuing them.

TARA KOSLOV: So we received a question about special dividends that relates to our recent blog post on this topic. So the question reads, recently the Bureau of Competition published a blog post withdrawing its informal advice that special dividends can never raise 801.90 concerns. Given that, is this issue still relevant?

KENNETH LIBBY: Yes, it's still relevant because the Commission still wants to better understand when and why special dividends are issued to determine whether adjustments to the rule are necessary to prevent evasion through the use of special dividends. Also, the Commission is very interested in understanding any non-avoidance reasons for declaring a special or extra

Accordingly,

