Gillis, Diana L.

From: Whitehead, Nora
Sent: Thursday, September 18, 2014 9:55 AM
To: [redacted]
Subject: RE: REIT Acquisition Question

Although the transaction is not exempt under 802.5, it is nevertheless exempt under 7A(c)(1).

Nora Whitehead
General Attorney
Premerger Notification Office
Federal Trade Commission
(202) 326-3262

From: [redacted]
Sent: Wednesday, September 17, 2014 5:25 PM
To: Whitehead, Nora
Subject: REIT Acquisition Question

Ms. Whitehead,

I am writing with a question regarding the potential exemption of a transaction involving an acquisition by a REIT.

There are three parties involved in the transaction:

Acquiring Party: Publicly traded REIT
Target Company: A limited liability company, whose most significant asset (more than 97% of its total asset value) is an interstate pipeline subject to FERC regulation
Operating Company: Independent third party that will be the operator/service provider with respect to the pipeline.

For transaction timing and FERC Approval reasons, the transaction will be completed in two steps:

Step 1: The Acquiring Party, through a wholly owned taxable REIT subsidiary corporation, acquires all of the outstanding equity of the Target Company for a purchase price exceeding the size of the transaction threshold. As a part of Step 1, Target Company will enter into an operating agreement with the Operating Company, pursuant to which the Operating Company will manage the operation of the pipeline. Also as a part of Step 1, the Target Company and the Operating Company will agree to enter into a Lease Agreement (fully negotiated in step 1) upon receipt of FERC approval, which Lease Agreement will provide for the long-term lease of the pipeline to the Operating Company.

Step 2: Upon receipt of FERC approval, the Operating Agreement will terminate and the parties will be obligated to execute the Lease Agreement. At that time, the taxable REIT subsidiary corporation holding the equity of Target Company will be converted into an LLC. The effect of the conversion will be a traditional REIT structure with the Acquiring Party being deemed for tax purposes to hold the pipeline asset through a series of disregarded entities and the pipeline asset will be subject to a lease to the Operating Company. Upon completion of Step 1, the revenue to be received by the Acquiring Party from the pipeline assets will be rental income from the lease.

As noted above, the sole reason for structuring the transaction using the two step approach is to balance the timing demands of the current owners of Target Company with the timing of the FERC approval process. We anticipate the

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delay between the completion of Step 1 and Step 2 to be no more than 90 days. Please confirm whether the transaction still qualifies for exemption as an acquisition of real property by a REIT or otherwise under Rule 802.5.

Thank you,

[redacted]