

801.2(d)
801.40
802.2(d)
802.4

From: [REDACTED]
To: mverne@ftc.gov <mverne@ftc.gov>
Date: Tue, Sep 19, 2000 5:57 PM
Subject: HSR Issue -

Hi Mike - I was hoping that you could confirm that no filing is necessary in the following situation.

Company A and Partnership B (both of whom are homebuilders) will form NewCo. Company A will contribute all of its voting securities (by way of a reverse triangular merger) in exchange for voting securities of NewCo. Partnership B will contribute all of its assets to NewCo in exchange for NewCo voting securities. Assume that under 801.40 both A and B are \$100 million entities and that NewCo will have total assets of more than \$10 million. Assume further that the assets held by Company A and Partnership B are all exempt under 802.2 (included are raw land, homes under construction, good will, cash, receivables and prepaids). Therefore, under 802.4 the transaction would be exempt.

Thanks - I have joined [REDACTED] My new phone number is [REDACTED]. Hope you had a nice vacation.

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CC: [REDACTED]

This is NOT AN 801.40 ANALYSIS. WE WOULD TREAT THIS AS A "CONSOLIDATION". COMPANY A IS DEEMED TO HAVE ACQUIRED ALL OF THE ASSETS OF PARTNERSHIP B AND PARTNERSHIP B IS DEEMED TO HAVE ACQUIRED ALL OF THE VOTING SECURITIES OF COMPANY A. SINCE ALL OF THE ASSETS OF BOTH ARE EXEMPT UNDER 802.2, BOTH ACQUISITIONS, AS WELL AS ACQUISITIONS OF NEWCO VOTING STOCK BY SHAREHOLDERS/PARTNERS OF A & B, WOULD BE EXEMPT FROM FILING.

B. Michael Verne
9/20/00