

802.2(2)
802.4

March 29, 2005

Via E-mail: mverne@ftc.gov

Michael Verne
Premerger Notification Office
Bureau of Competition, Room 301
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Rule 802.2(c)--Unproductive Real Property; Rule 802.2(d)--Office and Residential Property; Rule 802.4—Acquisitions of Voting Securities of Issuers Holding Certain Assets the Direct Acquisition of Which is Exempt

Dear Mr. Verne:

This letter will confirm our recent telephone call of March 16, 2005, which [REDACTED] and I, both of [REDACTED] participated in with you. The call concerned applicability of the above captioned rules (16 CFR Section 802.2(c) exempting unproductive real property, 16 CFR Section 802.2(d) exempting office and residential property and 16 CFR Section 802.4 exempting the acquisition of voting securities of issuers holding certain assets the direct acquisition of which is exempt) to our client's contemplated acquisition of the assets of a homebuilder and certain voting securities of certain affiliates of such homebuilder.

More specifically, our client, also a homebuilder, intends to acquire (i) the assets owned by another homebuilder and/or such homebuilder's controlled affiliates (collectively, the "Seller Parties"), (ii) all of the membership interests of a title company business owned and controlled by the Seller Parties, (iii) all of the partnership interests of a mortgage brokerage business owned and controlled by the Seller Parties and (iv) all of the membership interests of a residential property and casualty insurance business owned and controlled by the Seller Parties.

[REDACTED]

[REDACTED]

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While the parties are still negotiating the specific allocation of the purchase price among the assets of the homebuilder, the overwhelming value of the assets proposed to be acquired is in raw land held for future development, platted and previously subdivided lots and tracts, residential homes under construction or completed, the homebuilder's rights as seller under executory contracts to build and sell homes, and other work (such as streets, utilities and/or other infrastructure, etc.), associated with the homebuilder's various residential development projects and activities in various stages of progress, model homes and other tangible and intangible personal property (including, for example, plans and specifications, workforce in place and goodwill) related to the homebuilder's business as a residential developer/homebuilder. The tangible personal property (i.e., furniture, fixtures and equipment) is an insignificant portion (less than \$1 million) of the assets proposed to be acquired.

Notwithstanding the express delineation of items included within the term "office and residential property" set forth in subsection (d)(2) of Rule 802.2 (such as, for example, "residences" in subsection (d)(2)(ii) of Rule 802.2 and "assets incidental to the ownership of such property, including cash, prepaid taxes or insurance, rental receivables and the like" in subsection (d)(2)(iv) of Rule 802.2), you informed us that the staff of the Federal Trade Commission Premerger Notification Division (the "Staff") interprets such provisions as illustrative, but not exhaustive, of "real property that is used primarily for office or residential purposes" and "assets incidental to the ownership of such property" which qualify for exemptive treatment pursuant to Rule 802.2(d). Additionally, you clarified the Staff's position that the assets which do not qualify for such exemptive treatment are the assets you referred to as the "hard assets" (i.e., machinery, equipment and trucks).

Based on your comments made during our telephone call, it appears to us that a substantial portion of the assets proposed to be acquired qualify for the exemptions provided by Rule 802.2(c) and Rule 802.2(d) (with certain assets, i.e., raw land, structures or other improvements used primarily for residential purposes, perhaps qualifying for both to the extent such raw land, structures or other improvements meets the requirements of unproductive real property set forth in Rule 802.2(c)) and the voting securities to be acquired qualify for the exemption provided by Rule 802.4 to the extent that the underlying assets comprising the entities, the voting securities of which are proposed to be acquired, would be exempt if acquired directly, and, accordingly, the proposed transaction would only be subject to the premerger notification filing requirements of the Act to the extent that the assets which do not qualify for exemptive treatment pursuant to Rule 802.2(c) and/or Rule 802.2(d) exceed a value of \$53.1 Million.



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Please confirm to us that our understanding is correct. Thank you for your assistance and prompt attention to this matter.

Very truly yours,



AGREE-
B. Verne ✓
3/29/05