

802.2
802.5

Verne, B. Michael

From: [Redacted]
Sent: Thursday, September 20, 2007 9:34 AM
To: Verne, B. Michael
Subject: Question re: 802.2 and 802.5 exemptions

Mike,

I have a question regarding a transaction that I have analyzed and concluded would likely be exempt from the HSR reporting requirements pursuant to Rules 802.2, 802.4, and 802.5. In this proposed transaction, my client would sell 100% of the limited liability limited partnership interests in Subsidiary A, which is in the business of developing or acquiring affordable rental housing communities. It also sells the low-income housing tax credits generated as a result of the acquisition and/or development of these communities. While Subsidiary A does not directly hold title to any rental property developments, it holds ownership interests in numerous partnerships that it has set up or invested in for the purpose of developing or acquiring affordable housing communities.

On a consolidated basis with the partnerships that, directly or indirectly, develop or acquire the affordable housing communities, Subsidiary A holds the following categories of assets, all of which are related to its business of developing or acquiring low income housing and selling the associated tax credits:

- Fees and other amounts receivable earned from the development of affordable rental housing communities and the sale of the tax credits associated with those developments;
- Interests in partnerships established to develop or acquire affordable rental housing communities;
- Receivables stemming from advances made to partnerships established to develop and operate affordable rental housing communities;
- Notes receivable as a result of loans made or lines of credit extended to developers and project partnerships for the purpose of developing affordable rental housing communities (e.g., pre-development loans and bridge loans);
- Goodwill;
- Cash, fixed assets, and other miscellaneous assets incidental to operations, corporate and partnership offices, and prepaid expenses.

Though I've not found any informal interpretations on point, I would think that these types of assets would be considered incidental to the ownership of real property pursuant to 802.2 or incidental to the ownership of rental property assets pursuant to 802.5. Do you agree with this analysis?

Thanks,

[Redacted Signature]

AGREE -
BM
9/20/07