

[REDACTED]

802.4  
802.2(d)

May 29, 2003

VIA FACSIMILE

Michael Verne  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
7<sup>th</sup> & Pennsylvania Ave., N.W.  
Washington, D.C. 20580

Dear Mike:

I am writing to confirm my understanding of telephone conversations we had on Wednesday, April 30, 2003 and Thursday, May 29, 2003 concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), of a proposed transaction discussed below.

Proposed transaction

Our client intends to sell all of the issued and outstanding voting securities of two non-publicly traded and wholly owned subsidiaries. The purchase price will be approximately \$5 million payable in cash at closing. The acquiring party also will assume approximately \$95 million in debt through the acquisition of the two issuers. The two entities to be acquired invest -- through interests in multiple limited liability corporations, corporations, limited partnerships and limited liability partnerships -- in high quality, affordable housing that qualifies for federal low income housing tax credits. The vast majority of the assets of the two issuers consist of interests in residential property.

Conclusions

You agreed that the value of the proposed transaction falls below the \$50 million size of the transaction test, and that the acquisition is therefore not subject to the notification and reporting requirements of the HSR Act. See 15 U.S.C. § 18a(a). Specifically, you confirmed that the value for HSR purposes of non-publicly traded

[REDACTED]

[REDACTED]

[REDACTED]

Michael Verne  
May 29, 2003  
Page 2

voting securities with a determined acquisition price (in this instance approximately \$5 million) is the acquisition price. See 16 C.F.R. § 801.10(a)(2)(i). You also confirmed the long standing position of the FTC Premerger Notification Office that in determining the acquisition price of voting securities for HSR purposes the value of liabilities being assumed in the acquired entity should be excluded. You stated that the valuation for HSR purposes would not be impacted, such that the transaction would remain exempt, whether the purchase price was described in the purchase agreement as \$5 million (with the assumption of \$95 million in liabilities) or as \$100 million (consisting of a \$5 million payment and the assumption of \$95 million in liabilities).

→ You also confirmed that the value of the residential property held by the acquired entities should be excluded in valuing the transaction, and that if the acquired issuers (and entities controlled by those issuers) do not hold non-exempt assets with an aggregate fair market value of more than \$50 million, the transaction is HSR exempt regardless of the acquisition price. See 16 C.F.R. § 802.2(d); 16 C.F.R. § 802.4. You said that the exemption for residential property would apply even though the issuers to be acquired hold the property through limited liability corporations or other entities. Further, you said that in addition to excluding the value of the residential property in conducting an HSR valuation, it is appropriate to exclude "other related assets" to the residential property, and that tax credits associated with the residential property qualify as such excludable "other related assets."

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Sincerely,

THE VALUE OF THE RESIDENTIAL  
PROPERTY IS EXCLUDED FROM  
THE \$50mm LIMITATION IN  
802.4, NOT FROM THE SIZE  
OF TRANSACTION. OTHERWISE AGREE.

B. Michael Verne  
5/2/03