

Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, August 12, 2022 3:06 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle
Subject: FW: Request for Interpretation / Residential Property

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Friday, August 12, 2022 3:05:43 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Request for Interpretation / Residential Property

We agree with your analysis.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Thursday, August 11, 2022 10:58 AM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>
Subject: FW: Request for Interpretation / Residential Property

From: [REDACTED]
Sent: Thursday, August 11, 2022 10:57:55 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Request for Interpretation / Residential Property

Dear All –

Good morning.

I have a potential transaction that raises the applicability of the exemptions available under HSR Rules 801.21(a), 802.2(d) and 802.4.

Company A proposes to acquire Company B in a stock-for-stock transaction. Company A's sole asset right now is cash. Company B is primarily a residential homebuilder. Based on the market price of Company A's voting securities, the parties anticipate that the value of the voting securities that will be received by Company B's shareholders will be in excess of \$200 million (as adjusted) – implying an enterprise value of Company B also in excess of \$200 million (as adjusted).

As a homebuilder, Company B's assets consist predominantly of its inventory of empty lots, homes under construction, and finished (but unsold) homes (collectively "Inventory Assets"). Company B holds a large amount of cash reserves to be used as needed in connection with its operations. Company A may conclude that Company B holds intangible assets such as intellectual property and goodwill ("Intangible Assets"). Company B's remaining assets consist of (i) certain residential and office buildings that are leased to landowners, (ii) prepaid expenses, (iii) accounts receivable (iv) other current assets, (v) furniture, fixtures and equipment incidental to construction operations, (vi) office equipment, (vii) security deposits, (viii)

leasehold improvements, (ix) vehicles, (x) development projects, and (xi) amounts due from affiliated parties (collectively “Other Assets”).

We assume that Company A’s fair market valuation of Company B’s Inventory Assets will exceed \$50 million (as adjusted). However, we believe that under Rule 802.2(d), Company B’s Inventory Assets are exempt as “residential property.” This is consistent with [Informal Interpretation 0503022](#) (Mar. 29, 2005) (applying Rule 802.2(d) exemption to “raw land held for future development, platted and previously subdivided lots and tracts, residential homes under construction or completed”) and [Informal Interpretation 0512020](#) (Dec. 20, 2005) (applying Rule 802.2(d) exemption to real property lots, finished homes and homes under construction).

Company B’s cash reserves are exempt under Rule 801.21(a). And we believe that any portion of the Intangible Assets associated with the exempt Inventory Assets also will be exempt.

We believe that some portion of Company B’s Other Assets are exempt as assets incidental to the ownership of residential property or as investment rental property – *i.e.*, leased buildings, prepaid expenses, security deposits, leasehold improvements and amounts due from affiliated parties. But if we ignore those exemptions for the sake of simplicity, we believe that if Company A determines that the fair market value of Company B’s Other Assets and non-exempt Intangible Assets is \$50 million (as adjusted) or less, then its acquisition of Company B will be exempt under Rule 802.4.

Lastly, because Company A’s sole asset at present is cash, the Company B shareholders’ backside receipt of Company A voting securities will be exempt under Rules 801.21(a) and 802.4.

Do you concur?

Thank you,

[REDACTED]

[REDACTED]