

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, January 11, 2024 3:48 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Exemption Inquiry

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Thursday, January 11, 2024 3:47:45 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Exemption Inquiry

[REDACTED]

[REDACTED]

The cited informals are quite old and do not reflect our current position. "Assets incidental" are defined as "cash, prepaid taxes or insurance, rental receivables and the like." Further, the rule also states that "[i]f the acquisition includes the purchase of a business conducted on the office and residential property, the transfer of that business, including the space in which the business is conducted, shall be subject to the requirements of the act and these rules as if such business were being transferred in a separate acquisition." Finally, businesses are not exempted by either 802.2 or 802.4 – these exemptions relate to the underlying assets only.

Based on the limited facts we have, we only view the first two items as exempt.

Best regards,
Kristin

Kristin Shaffer
Attorney
Premerger Notification Office
Federal Trade Commission
202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Wednesday, January 10, 2024 12:27:11 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Exemption Inquiry

Dear PNO Staff,

We would appreciate your view on the following fact pattern and analysis.

Our client, Company A, intends to acquire 100% of the outstanding voting securities of Company B (the "Transaction"), which is primarily in the business of homebuilding. The Transaction value exceeds \$111.4M and the parties meet the size of person test, however we believe the Transaction is exempt under 7A(c)(2) and HSR Rules 802.4, 802.2(c), 802.2(d) and 801.21.

The vast majority of Company B's assets are residential properties held for sale or lots under development and real property held for development, exempt under 802.2(c) and 802.2(d). Informal Int. 9909013 (Sept. 1, 1999). Company B also holds:

- Cash and cash equivalents, exempt under 801.21. Informal Int. 0709014 (Sept. 20, 2007);

- Mortgage loans related to the underlying exempt properties of Company B, exempt under 7A(c)(2). Informal Int. 0804014 (Apr. 28, 2008);
- Accounts receivable from real estate or mortgage loan customers, exempt under 802.2(d). Informal Int. 9909013 (Sept. 1, 1999);
- Sales facility assets incidental to homebuilding operations, such as model homes and model home furniture, exempt under 802.2(d). Informal Int. 0709014 (Sept. 20, 2007) and Informal Int. 9909013 (Sept. 1, 1999);
- Goodwill associated with the acquisition of homebuilding assets, exempt under 802.2(d). Informal Int. 0503022 (Mar. 29, 2005) and Informal Int. 9909013 (Sept. 1, 1999);
- Intangible personal property associated with the homebuilding business (other than equipment), exempt under 802.2(d). Informal Int. 0503022 (Mar. 29, 2005) and Informal Int. 9909013 (Sept. 1, 1999);
- Financial services business (title and insurance services), to the extent incidental to the homebuilding business, exempt under 802.2(d); and
- A corporate airplane.

Other than the corporate airplane, which may be considered a non-exempt "hard asset" under Informal Int. 0503022 (Mar. 29, 2005), we believe the assets described above are exempt under the HSR rules. Buyer's valuation of Company B's remaining non-exempt assets is below \$111.4M and as such, a filing is not required.

We would appreciate your confirmation that our understanding is correct.

Thank you,

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