

801.1(d)(2)

Verne, B. Michael

From: [Redacted]
Sent: Wednesday, March 14, 2012 12:22 PM
To: Verne, B. Michael
Cc: [Redacted]
Subject: Associate Entity Question 801.1(d)(2)
Attachments: Acquiring Party Structure 2.pdf
Importance: High

Mike:

I am representing the acquiring party in a transaction that will require an HSR filing and am trying to understand whether or not certain entities qualify as associates under the new regulations. For your convenience, I have attached a structure chart outlining the structure of the acquiring party.

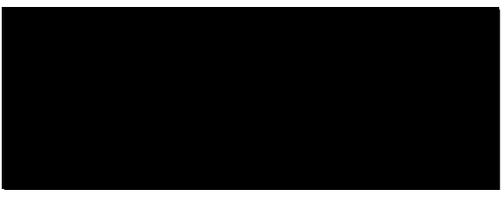
I understand that it is unlikely a corporation will have associate entities as the board of directors of the corporation typically has the sole right to manage the operations and investment decisions of the corporation. (See Decision Tree for Identifying Associates, available at: <http://www.ftc.gov/bc/hsr/decision-tree.pdf>). In this particular scenario, the two largest shareholders, PE 1 (Partnership) and PE2 (Partnership) (collectively, the "Private Equity Funds") have approximately 45% and 30% of the voting securities of the UPE and are unrelated private equity funds. These Private Equity Funds are also both the "Managing Members" of LLC 1 that is the "Managing Member" of Partnership A that holds approximately 25% of the voting securities of the UPE.

We have confirmed that the Partnership A is not controlled (for purposes of the HSR Act) by either of the Private Equity Funds. We have also confirmed that the Private Equity Funds are not able to appoint a majority of the board of directors of the UPE. Thus, we are confident that we have the correct UPE. We were not sure, however, whether the Private Equity Funds (and those entities above the Private Equity Funds) could be considered associate entities given that the Private Equity Funds are the managing members of Partnership A, which has 25% of the voting securities of the UPE.

Given that the UPE has a board of directors and is not controlled (or managed) by any entity, we did not think the private equity funds would qualify as associate entities, but wanted to check with you given the fact pattern. We are happy to provide additional information as needed.

Thanks in advance for your consideration of this issue.

MDK



PE 1 & PE 2 ARE NOT ASSOCIATES.
K. WALSH CONCURS.
[Signature]
3/14/12

***** IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS and other taxing authorities, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed on any taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

