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801.10

**Verne, B. Michael**

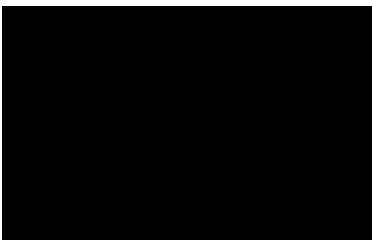
**From:** [REDACTED]  
**Sent:** Tuesday, November 29, 2011 1:58 PM  
**To:** Verne, B. Michael  
**Subject:** RE: Request for advice

Thank you for the prompt reply. If you would indulge me, I would like to pose a follow up hypothetical:

1. A and B, who are neither affiliates nor associates of each other, have negotiated a single purchase agreement ("PSA") to buy 100% of the LLC interests in C.
2. C's assets consist of oil and gas reserves with a value of approximately \$715 million and other assets with a value of approximately \$89 million, which consist primarily of associated exploration and production assets. C has liabilities of approximately \$260 million.
  - o Based on these facts, the negotiated purchase price for 100% of the LLC interests is \$543.5 million.
3. Under the PSA, A will buy a 90% LLC interest and B will buy a 10% LLC interest at a simultaneous closing governed by the PSA, for a total purchase price of \$543.5 million, plus reimbursement of C's transaction expenses of \$5 million, for total consideration paid of \$548.5 million.
  - o The total consideration will be split 90/10 between A and B, with A paying \$493.6 million and B paying \$54.9 million.
4. Because B is purchasing a 10% LLC interest that does not confer control of C, and B is neither an affiliate nor an associate of A, I believe that B's acquisition is not reportable. *AGREE*
5. Based on your email below, I analyze A's acquisition as follows:
  - o The acquisition is reportable, because 90% of the value of the oil and gas reserves held by C (which will be held by A as a result of the acquisition) is more than the \$500 million exemption cap for carbon based reserves ( $715 \times 90\% = 643$ ). *SHOULD USE 100%*
  - o The size of the transaction will be \$493.6 million, which is A's purchase price for the 90% LLC interest it will acquire, and accordingly, the filing fee will be \$125,000. *AGREE*

I would ask that you please either confirm this analysis or agree to discuss it with me so that I may give our client accurate advice in connection with the filing. The client will be requesting early termination of the waiting period, and so we want to be sure that we are as accurate as possible in submitting the filing. Any advice you can give as to how to facilitate the review of the filing so as to achieve early termination would also be greatly appreciated.

Many thanks again, and please let me know if you have any questions or desire clarification.



*BM*  
*11/29/11*

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**From:** Verne, B. Michael [mailto:MVERNE@ftc.gov]  
**Sent:** Tuesday, November 29, 2011 10:59 AM

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