

802.2
802.3

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, March 13, 2013 1:15 PM
To: Verne, B. Michael
Subject: RE: HSR Questions

Mike,

I'm following up on my email below. We've continued our analysis and have just two questions we would like your views on.

By way of background, the transaction will consist of the purchase and sale of an undivided 50% interest in all oil, gas and mineral leases in an agreed Area of Mutual Interest, together with an 50% undivided interest in all wells (O&G and salt water disposal) and other associated exploration and production assets connected to or otherwise used in connection with the wells or the ongoing E&P program. As I'm sure you know, under applicable state law, an undivided interest is a discrete, assignable interest in the real property lease and underlying minerals, and assignments of the undivided interest will be recorded in the real property records. The acquisition will be effective as of a fixed date before the closing, and as a result, the assigned interest will include 50% of all O&G inventory produced from the properties involved and held by the seller as of the closing date.

The two questions are:

1. In applying the exemption for unproductive real property under Rule 802.2, are we correct in applying the \$5 million limit for revenues over the last 36 months only to the revenues attributable to the undivided interest being acquired (i.e., the 50% undivided interest in the properties to be acquired in this transaction)?
2. Are we correct in concluding that the O&G inventory at closing will be either exempt under Rule 802.1(c)(1) as inventory acquired in the ordinary course of business solely for purposes of resale, or eligible for exemption under Rule 802.3 as part of the carbon-based minerals to be acquired?

In this transaction, because the properties are still in the development phase, all of the interests to be acquired will qualify for exemption under either Rule 802.2 or Rule 802.3 (unless the O&G inventory is exempt under Rule 802.1). This will be the case even if we use 100% of the seller's revenues from the properties for purposes of the Rule 802.2 analysis, but we want to be as correct as possible in advising our client.

Please do not hesitate to let me know if you have any questions or believe we should discuss.

Many thanks as always for your help and guidance.

From: [REDACTED]
Sent: Thursday, March 07, 2013 1:48 PM
To: 'mverne@ftc.gov'
Subject: HSR Questions

Mike,

We are working on an oil and gas deal and have a couple of questions I would like to discuss with you. Would you have 15 minutes later today or tomorrow to talk?

1. Only use the revenues attributable to the 50% interest being acquired, not the revenues attributable to the entire reserve. Likewise, for purposes of 802.3, value only the 50% interest.
2. I think the O&G inventory is more appropriately exempted under 802.1(c)(1) as it has already been extracted from the reserve.

BW
3/13/13