

802-9

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, April 09, 2013 5:29 PM
To: Verne, B. Michael; Walsh, Kathryn
Cc: [REDACTED]
Subject: Question regarding 802.9 and "competition" between acquirer and target issuer

Mike and Kate,

I was unable to find any guidance on this specific question and so would be grateful for your view during the course of Wednesday, if possible.

The question is this:

We understand that prior precedent, as well as the original Statement of Basis and Purpose of the Act, indicates that being a "competitor" of the issuer may be viewed as inconsistent with an investment only purpose. In our scenario, Issuer X has a minority, non-controlling position in each of Issuers Y and Z. Issuers Y and Z may be competitors of Acquirer A. Does that fact alone mean that there is potential competition between Acquirer A and Issuer X, or it is clear that the extent of any competing activities of either Issuer Y or Issuer Z is not attributed to Issuer X for purposes of determining whether the solely for the purpose of investment exemption is available to Acquirer A?

Acquirer A has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer, and specifically no intention of taking any of the other actions listed in the SBP as potentially inconsistent with a passive investment intent.

Many thanks for your time and consideration.

Best,

[REDACTED]

[REDACTED]

[REDACTED]

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If the investment is 10% or less and completely passive, the exemption is available. If more than 10% but less than 50%, it would need more analysis, but the presumption that this investment defeats the exemption is still rebuttable.

B
4/10/13

KW, JP, KB concern.