

**Walsh, Kathryn E.**

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**From:** Verne, B. Michael  
**Sent:** Thursday, June 26, 2014 10:26 AM  
**To:** [REDACTED] Walsh, Kathryn E.  
**Cc:** [REDACTED]  
**Subject:** RE: JV Formation Questions

Kurt -

Group A - We agree no filing required for these steps under continuum

Group B - We agree, file for the formation of Aggregator with C as the acquiring person

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**From:** [REDACTED]  
**Sent:** Thursday, June 26, 2014 9:14 AM  
**To:** Verne, B. Michael; Walsh, Kathryn E.  
**Cc:** [REDACTED]  
**Subject:** JV Formation Questions

Dear Mike and Kate -

We have a transaction in which two groups of PE funds (Group A and Group B) will form a non-corporate joint venture entity (Holdco). We have questions about filing requirements for a preliminary (pre-JV formation) restructuring within Group A and the appropriate filing analysis for Group B's filing for the JV formation.

Group A:

There are three Group A limited partnership investment funds, X, Y and Z (each separate UPEs) holding interests in an existing LLC ("Group A LLC"). Group A LLC holds several subsidiaries that will be contributed to Holdco, the new non-corporate joint venture entity. Y currently holds a 52% interest in the Group A LLC and thus is the Group A LLC UPE.

As a first step, Z is going to contribute cash to Group A LLC in exchange for additional interests in Group A LLC. After the first step, Z will hold more than 50% of the Group A LLC interests and thus will have acquired control of the Group A LLC from Y.

Immediately thereafter, in step 2, Group A LLC will contribute its subsidiaries to Holdco, in exchange for a roughly 30% interest in Holdco. Step 2 does not trigger an HSR filing requirement because Group A LLC will not acquire control of Holdco. (Note that Group B will have to file for its acquisition of the remaining 70% interest in Holdco - see below.)

Standing alone, this first step would trigger an HSR filing requirement. However, because (1) Z's acquisition of control of the Group A LLC and its subsidiaries is merely an intermediate step in the formation of Holdco, (2) Z will control the subsidiaries for only an instant prior to the transfer of the subsidiaries to the new Holdco, and (3) because the agencies will receive an HSR filing for the formation of Holdco from Group B, Z should not be required to submit an HSR filing for the intervening step under the PNO's continuum theory.

Please let us know if you agree.

Group B:

Group B is composed of six separate UPEs that collectively will hold approximately 70% of the interests in Holdco (Group B UPEs). Assume size of person and size of transaction will be met.

For tax and other reasons unrelated to HSR, the transaction steps will be structured as follows:

As a first step, the Group B UPEs each will contribute all of their current holdings (which consist of subsidiaries that hold oil and gas properties and related assets) to Holdco and, in exchange, each will receive less than 50% of the interests in Holdco.

Immediately thereafter, in step 2, the Group B UPEs will contribute their interests in Holdco to a newly-formed non-corporate aggregator entity (Aggregator) and, in exchange, will receive interests in Aggregator. As a result, C, one of the Group B UPEs, will hold greater than 50% of the interests in Aggregator. Aggregator, in turn, will hold approximately 70% of the interests in Holdco. Thus, as a result of step 2, C will control Aggregator, which will control Holdco.

Standing alone, step 1 is not reportable because no Group A or Group B UPE will hold as much as 50% of Holdco interests.

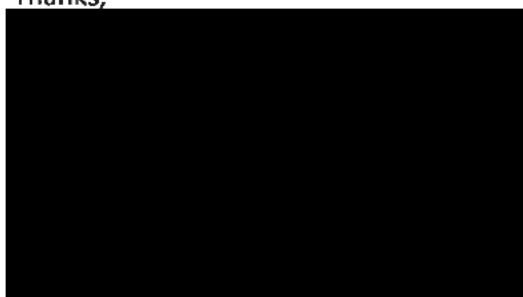
With respect to step (2), if we report the formation of Aggregator with C filing as the acquiring entity, C will hold only minority interests in Holdco and thus will not report revenues in Item 5. As the joint venture, Aggregator does not have a filing obligation. In Item 5(d), C would report Aggregator as doing business in NAICs codes related to all the businesses contributed to Holdco by the Group A and Group B UPEs. C will not report any overlap with Aggregator in Item 7.

Do you agree with the approach outlined above?

Note that the analysis and reporting obligations would be different if the Group B UPEs had formed Aggregator first and then Aggregator acquired a controlling interest in Holdco. In that case, there likely would be two filings (C's acquisition of a controlling interest in Aggregator and C's acquisition through Aggregator of a controlling interest in Holdco) with more information contained in Item 5.

Please let us know if you would like to discuss any of the above and we can arrange a conference call.

Thanks,



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