

801.10

**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Thursday, March 13, 2014 5:45 PM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** Inquiry re: Size of Transaction

Dear Mike,

We are seeking your confirmation that the "size of transaction" test is not satisfied under the circumstances described.

Our client ("Holdco"), which is burdened with approximately \$[100] mm of debt, is selling one of its two business lines to buyer ("Buyer"). Currently both business lines are run through an operating company ("Opco"), indirectly controlled by Holdco; Opco itself is burdened with approximately \$[250] mm of debt. In order to effect the sale, Holdco will undergo a corporate restructuring. Following such restructuring, all steps of which are exempt via 16 CFR Section 802.30 and/or 7A(c)(10), Buyer will acquire voting securities of Holdco that holds only the acquired business. After pay-off of outstanding debt at the Holdco and Opco levels, there will be little – if any – consideration going to the equity holders in exchange for their voting securities. Thus, we feel that the "size of transaction" tests is not satisfied. However, given the complexity of the various steps, we wanted to seek your confirmation that you agree with our conclusion.

The simplified transaction steps are below (to clarify, the steps described in 1, 2, 3, 4, 6, and 7 are part of the restructuring – to separate the acquired business from the other business of Opco):

1. Holdco forms a wholly-owned subsidiary ("Newco Inc."). This is exempt pursuant to the intra-person exemption.
2. The shareholders of Holdco form a new limited liability company ("New Holdco") and a wholly-owned merger sub ("Merger Sub"); Merger Sub merges with and into Holdco. New Holdco is held by the shareholders of Holdco in proportion to their prior interests in Holdco. These steps are exempt pursuant to 7A(c)(10) and Section 802.30.
3. On the closing date, Opco transfers all assets and liabilities of the acquired business into a newly-formed limited liability company ("NewCo LLC"). This is exempt pursuant to 16 CFR Section 802.30.
4. On the closing date, Opco and the intermediate holding company convert from corporations to limited liability companies. This step is also exempt pursuant to 7A(c)(10).
5. On the closing date, Buyer loans Holdco \$[325] million, an amount equal to the outstanding debt; Holdco uses \$[100] mm to pay off its debt and contributes the remainder down to Opco, which pays off its outstanding debt, \$[225] mm;
6. Subsequent to the repayment of debt, Opco distributes its interest in NewCo LLC up the chain to Holdco. Holdco distributes its interest in an intermediate holding company, which holds Opco, to Newco Inc. Both of these are intra-person events.
7. Holdco redeems a portion of shares held by New Holdco in exchange for shares of Newco Inc. Buyer purchases all voting stock of Holdco from New Holdco; due to the reorganization described above, Holdco holds only the NewCo LLC, the entity holding the acquired business. The consideration is the \$[325] million loan in step 5 in addition to, possibly, a small amount of cash. Any amount of cash will be far less than \$75.9 mm. We contend this cash amount, if any, is the only consideration deemed to be for the voting securities of Holdco in exchange for their shares.

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We understand, in an acquisition of voting securities, that it is the PNO's longstanding interpretation that consideration not going to shareholders (i.e. paying off or assuming third party debt) may be deducted for purposes of Section 801.10 as it is not consideration of the acquisition of the voting securities. See Informal Interpretation 131003<<http://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1310003>>. Additionally, we believe the facts are distinguishable from Interpretation #88 of the 4th Edition Premerger Notification Practice Manual because the buyer here is paying off debt that *is related* to the acquired entities – e.g., the Holdco and Opco - notwithstanding that the debt was incurred at a time that Opco had two business lines. Please let us know if you agree that a filing is not required under our circumstances.

Best,

AGNEL  
B  
3/14/14

KW & DG  
CONCERN

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