

802.1
802.2(d)

From: [redacted]
To: FTC.SERIOUS("mverme@ftc.gov")
Date: Wed, Sep 13, 2000 11:40 AM
Subject: HSR Filing Obligations

Please confirm the following analysis with respect to HSR filing obligations.

A and B are a natural persons who manage 8 limited liability companies and 7 corporations (together the "X Companies") owned by Corporation Z. A and B intend to create 15 separate corporate entities (together the "C Companies"), each of which A and B will own jointly 50-50%. Z agrees to sell the assets of the X Companies to the C companies, with each individual C Company acquiring the assets of an individual X Company for an aggregate value of slightly more than \$30 million. A and B also intend to create D and E, corporations that A and B will own jointly 50-50%. Z also agrees to transfer 100% of the voting securities of the 7 X Company corporations to D for an aggregate nominal value of one dollar and all real estate owned by the X Companies (property on which their facilities are located) to E for an aggregate value of less than \$15 million. A and B each have personal assets slightly in excess of \$10 million, and Z has both assets and sales substantially in excess of \$100 million.

The X Companies are all automobile dealerships. The "real estate" assets (as defined in the Agreement) include only the land on which each dealership is located. The non-real estate assets (as defined in the agreements) include the office space, show room space, service area, parking lots, inventory of cars, furniture and service parts among others.

Question One: A's income is derived from salary for managing the X Companies and income from his personal investments. He is not a professional investment manager and does not invest for anyone's account except his own. With respect to Item 5, please: (i) confirm that A does not report salary and (ii) advise on whether A must report interest or gains from personal investments. If the answer to both parts of the question is that A does not report either type of income, please confirm that the correct answer to Item 5 is "None."
- CORRECT
- YES
- NO

Question Two: Please confirm that the transaction must be reported as both an asset and a stock deal notwithstanding that the value of the stock portion is only \$1 dollar.
- YES

Question Three: Please confirm that, under Rule 802.2(d), the value of the portions of the automobile dealerships that constitute parking lots and office space may be excluded from the value of the assets to be acquired.
- NO -

PARKING LOTS / OFFICE SPACE ACQUIRED IN CONNECTION WITH A BUSINESS ARE NOT EXEMPT UNDER 802.2(d)

Question Four: Please confirm that the exemption in 802.1 for real property sold in the ordinary course of business does not apply.
- CORRECT

Question Five: Please confirm that each of A and B as UPEs of the C Companies reports on the full aggregate value of the transaction not on 50% of it. (I.e., even if the aggregate value of the transaction were between \$15 million and \$30 million, the transaction would still be reportable because each Acquiring Person's UPE files on the entire value even if the it only owns 50% of the Acquiring Person.)
- CORRECT

Thank you in advance.



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SEE NOTES ABOVE.

B. Mueller

9/15/00

Post-Merger Structure

