

Verne, B. Michael

From: [Redacted]
Sent: Monday, May 03, 2004 12:22 PM
To: Verne, B. Michael
Subject: Hypothetical

Hi Mike. Following is the hypothetical that I mentioned in my voice mail message:

Company A currently owns voting securities of Company B. Company B intends to repurchase some of its own voting securities from Company A. As consideration, Company A will receive 100% of the voting securities of a Company A subsidiary ("Sub") the assets of which will include (1) 100% of the interests in a partnership, the assets of which are valued at approximately \$25 million; (2) a minority voting security interest in a corporation the ultimate parent entity of which is Company A; and (3) contractual rights to a stream of cash payments. The minority voting security interest and the contractual rights are valued in excess of \$50 million.

If Company A were to receive these assets directly, no HSR filing would be required because (1) the partnership assets would fail size of transaction, (2) the minority voting security interest acquisition would be an exempt interperson transaction, and (3) the stream of cash payments would be exempt (per my conversation this morning with Nancy Ovuka). My question is whether this changes simply because these assets will be acquired indirectly through the acquisition of the voting securities of Sub. You should know that Company A owns additional voting securities of Company B. Accordingly, if the acquisition of Sub is potentially reportable, I would have to aggregate the value of its voting securities with the value of the Company B securities already owned by Company A.

Please call me to discuss.

Thanks,

[Redacted signature]

THE MINORITY VLS INTEREST WOULD NOT COUNT TOWARD THE \$50M LIMITATION FOR NON-EXEMPT ASSETS UNDER 802.4, BUT THE PARTNERSHIP ASSETS & CONTRACTUAL RIGHTS WOULD. IF THE RIGHTS ARE VALUED AT \$25M OR LESS, THIS IS EXEMPT UNDER 802.4.

Bruell
5/3/04