

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, December 16, 2004 3:06 PM
To: Verne, B. Michael
Subject: Question under (c)(4) and 801.1(a)(2)

Here's a question I hadn't encountered before.

[REDACTED] is an agency of the State of California that manages retirement funds for state employees.

[REDACTED] is the largest investor in a limited partnership and controls that partnership for HSR purposes.

The limited partnership acquires a company for more than \$50 million and size-of-person tests are met.

I would have said: easy case. [REDACTED] is off the hook under (c)(4). Anything it acquires is exempt, even if the acquisition is made through an acquisition vehicle.

But I am troubled by the parenthetical in 801.1(a)(2) that seems to say that if [REDACTED] controls a corporation engaged in commerce, acquisitions by that corporation might be reportable, and because [REDACTED] isn't an entity, it can't be the ultimate parent, so the corporation might have to file as though it were the UPE, even though it's controlled by [REDACTED]

If my acquisition vehicle in this case were a corporation, would I have to worry about whether it's a "corporation engaged in commerce" that might be a potential reporting person? Am I saved by the (fortuitous) fact that my acquisition vehicle is in fact a partnership? Or is there an intended distinction between a subsidiary or acquisition vehicle formed by a state agency, and a corporation that is an operating company owned by a state agency?

IF THE ACQUISITION VEHICLE WAS A CORPORATION, THE TRANSACTION IS POTENTIALLY REPORTABLE BECAUSE THE CORPORATION IS AN ENTITY & WOULD BE THE ACQUIRING PERSON.

D. Michael
12/16/04

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