

7A (c)(1)
802.3
802.4



April 13, 2005

Via Email

B. Michael Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Re: Transactions Involving Oil and Gas Properties

Dear Mr. Verne:

As a follow-up to our telephone discussion on Tuesday April 5th, we wanted to put the details of two proposed transactions involving oil and gas properties in a letter to you and confirm our understanding of the HSR analysis. The two transactions are related, involving the same parties, and there is a good chance that the second transaction will occur a month or two after the first transaction. However, the two transactions are not conditioned on one another and there is no guarantee that the second transaction will ever occur.

At the time of the first transaction, "Seller" will own all interests in a limited partnership (the "Limited Partnership") holding oil and gas properties valued in excess of \$1 billion (the "Properties"). At closing of the first transaction, "Buyer" will pay in excess of \$500 million to the Limited Partnership in exchange for a "variable undivided percentage interest" (the "Production Payment") in oil and gas reserves underlying certain of the Properties. This Production Payment entitles Buyer to cash payments from the Limited Partnership of the net profits (after costs) realized by the Limited Partnership as it sells the oil and gas that is produced.

Although this Production Payment is not made "in kind" (i.e. the Limited Partnership does not give Buyer actual oil and gas for Buyer to sell but instead pays Buyer cash proceeds from production sales by the Limited Partnership), the Production Payment may be



considered to be a real property interest under the laws of some states. Buyer will not operate the wells at this point, though there are restrictions on Seller's ability to operate the Properties (Seller generally must operate the Properties in accordance with Buyer's instructions). Buyer may become the operator at some later time under a contractual arrangement or, possibly, as operator of record.

Historically, the PNO has often treated acquisitions of production payments like financing arrangements or collateralized loans subject either to HSR statutory exemption (c)(1) (the "ordinary course of business" exemption) or (c)(2) (exemption for acquisitions of obligations which are not voting securities). As I understand it, the PNO's position has not changed, and the acquisition of the Production Payment in this case would not be reportable.

Subsequent to the acquisition of the Production Payment, Buyer and Seller are contemplating entering into an agreement for a second transaction. As noted above, the first transaction is not conditioned on the parties signing an agreement for the second transaction, and there is some chance that the second transaction will never occur. In the second transaction Buyer would purchase 95% of the common interest in the Limited Partnership from the Seller for more than \$50 million but less than \$500 million and would become the partnership's managing general partner. Seller would retain the remaining partnership interests including certain preferred interests. Buyer would have the right to redeem Seller's partnership interests in seven and one-half years or upon the occurrence of certain partnership contribution defaults or changes in law after which it could terminate the Production Payment as holder of the interests on both sides of the Production Payment transaction. Seller would also have the right to early redemption of its partnership interests if certain events beyond Seller's control materialize. At the time of the second transaction, the value of the oil and gas properties held by the Limited Partnership would be less than \$500 million because they are subject to the Production Payment obligation.

Because the value of the oil and gas properties in the limited partnership will not exceed \$500 million at the time of the second transaction, the 802.3 exemption (acquisitions of carbon-based mineral reserves) and 802.4 exemption (acquisitions of voting securities of issuers or non-corporate interests in unincorporated entities holding certain assets the acquisition of which is exempt) apply, and no HSR filing will be required for the second transaction.

[REDACTED]

We would appreciate it if you could confirm this analysis and conclusions. Thank you for your help on this matter.

Sincerely yours,

[REDACTED]

cc: [REDACTED]

[REDACTED]

AGREE - THE ACQUISITION OF
THE PRODUCTION PAYMENT IS
EXEMPT UNDER ~~15~~ 7A(C)(1).

B. McCallum
4/14/05