

802.30

Verne, B. Michael

From: [Redacted]  
Sent: Wednesday, December 28, 2005 4:43 PM  
To: Verne, B. Michael  
Subject: HSR Compliance Question

Dear Mr. Verne,

I would appreciate it if you could provide me guidance with respect to the following HSR question.

Party A and Party B presently are co-parties in a joint venture. The joint venture is structured as a general partnership, and each of the parties has a 50% general partnership interest in the joint venture, including the right to 50% of the profits of the joint venture and 50% of its assets after the payment of its debts in the event of its dissolution. Party B now contemplates exiting the joint venture by selling its 50% general partnership interest in the joint venture to Party A.

If the size-of-transaction and size-of-person tests were met, would the proposed acquisition be subject to the HSR Act? More specifically, is it possible for a controlling party of a non-corporate entity to acquire control of that entity within the meaning of 16 C.F.R. Section 801.2(f)(1)(i) and thereby trigger a premerger notification filing requirement where it holds exactly 50% of the non-corporate interests in that entity before the acquisition and acquires the remaining 50% as a result of the acquisition?

Under 16 C.F.R. Sections 801.1(b)(1)(ii) and 801.2(f)(1)(i), a reportable acquisition of non-corporate interests for HSR purposes occurs when an acquiring person acquires "control" of an unincorporated entity where "control" means having the right to 50% or more of the profits of the entity, or having the right to 50% or more of the assets of the entity after the payment of its debts upon its dissolution.

Party A already has control of the joint venture within the meaning of Section 801.2(f)(1)(i) pursuant to its 50% general partnership interest. Therefore, it seems counterintuitive that its purchase of Party B's 50% general partnership interest would be deemed to be an acquisition of control subject to the HSR Act, although it is literally an acquisition of the right to 50% or more of the profits of the general partnership and the right to 50% or more of its assets in the event of dissolution.

I have not been able to locate any specific guidance on this topic, and any clarification that you may be able to provide would be appreciated.

Best regards,

EXEMPT UNDER 802.30  
B. Michael  
12/28/05



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