

Verne, B. Michael

801.1(b)

From: [REDACTED]
Sent: Wednesday, January 03, 2007 12:41 PM
To: Verne, B. Michael
Subject: From [REDACTED]

Mike,

This e-mail sums up several phone calls and phone messages we have exchanged over the past few days. I want to confirm that, based upon these facts, my client need not file because it does not meet the size of the party test.

My client is an asset fund (FUND II). It is a limited partnership. The general partner (4 individuals) owns 2% of the interest in the LP. There are numerous limited partners, none of which owns more than 50% of the interests. FUND II has capital commitments, but not cash, of over \$300 million. In addition, FUND II owns 3 companies, which have total assets of approximately \$148 million. FUND II carries its investment in these companies on its books as an asset in the amount of \$51 million. Its cash on hand and other assets are negligible. Netting these out, FUND II's assets, for purposes of the size of the party test, are \$97 million. Moreover, its NET SALES are less than \$70 million. Based upon these values and calculations, FUND II would not have to initiate an HSR filing even though the size of the transaction is over \$57 million.

FUND II shares certain members of its general partner with FUND I. FUND I is also an asset fund and is also a limited partnership. FUND I clearly meets the size of the person test. FUND I's general partner (4 individuals) owns 2% of the interests of FUND I. The limited partners own the remaining interests, and none of them owns 50% or more. Two of FUND I's general partners are general partners in FUND II. In addition, these two overlapping individuals own 50% or more of the general partnership interests in FUND II. Effectively then, FUND I and FUND II are managed by the same individuals. None of these individuals, however, owns 50% or more of the interests in FUND II or FUND I. Moreover, no one is entitled to 50% of the profits or 50% of the assets upon dissolution of either FUND I or FUND II.

My understanding is that 801.1(b)(2) does not apply to partnerships. As a result, and based upon these facts, my understanding is that FUND I and FUND II are their own UPEs.

Consequently, no filing is required for FUND II's anticipated transaction. Please confirm that my understanding is correct. If you disagree, please contact me at the address and phone number below.

Thank you for your assistance.

Agree -
[Signature]
1/3/07

