

Verne, B. Michael

FOMM W GENUW

From: [REDACTED]
Sent: Tuesday, January 23, 2007 8:27 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Questions about UPE when deal structure may change

Mike

These are the questions that [REDACTED] and I wanted to ask you. The deal involves an investment bank that is buying companies through a group of different funds that are raising money in different markets (US, Canadian, foreign). The purchase will actually be made through an acquisition vehicle.

1. There is some uncertainty about the UPE. This is a deal where several investment funds are raising money to fund an acquisition through an acquisition vehicle. The UPE may be the acquisition vehicle itself OR (depending on how much money the individual funds may raise), it may be one or more of the investment funds driving the transaction. If we file for an investment fund, and it turns out that the acquisition vehicle is only the UPE, what do we do? (This could happen if four investment funds raise an equal amount of money, so that no one controls the acquisition vehicle.)
2. Do we amend the filing to substitute the lower entity (the acquisition vehicle)?
3. If so, do we need to pay another fee where we are substituting one UPE for another?
4. If we amend, what happens to the waiting period?
5. If, instead of merely substituting one UPE for another, what happens if we have to substitute three investment funds. Since they are all their own UPEs, we assume they will have to file and pay separately. Does that mean that the waiting starts to run all over again?
6. Size of Person test. The UPE will have no assets (except cash or cash commitments) at the time of filing, but it is almost certain to have assets through other deals when this transaction closes. What do we do about that? At the time of filing, the UPE technically will not even meet the size of person test so it shouldn't be making a filing. But it will meet the size of person test at closing.
7. Finally, financial data related to acquired companies. At time of filing, the UPE will not have any revenue information because it won't have any assets. But it will at closing, assuming that some other transactions close before this one. We have a sense that the parties are trying to close on all deals as fast as possible, but we can't predict what other closings are actually going to conclude before this one. On the other hand, if we file, based only on current assets (zero), aren't we giving a misleading picture?

We have not encountered situations like this and would really appreciate your guidance. [REDACTED]
number is [REDACTED]

Thanks,

[REDACTED]

1. Because the acquisition vehicle was shown as being within the person of the investment fund there is no need to amend if the acquisition vehicle ends up being its own UPE.
2. No need to amend
3. No new fee
4. No change to the waiting period
5. I'm not sure how you would have three UPEs of the acquisition vehicle, but you are correct that each would be a separate new filing with a filing fee for each.
6. Stipulate that the size of person test will be satisfied at closing.
7. Explain that other entities will be acquired prior to the acquisition you are filing for. You don't need to supply Item 5 info for them, but a description of the businesses would be helpful as a footnote to Item 5.

M
1/23/07