

Verne, B. Michael

802.4

From: [REDACTED]  
Sent: Wednesday, January 24, 2007 3:59 PM  
To: Verne, B. Michael  
Cc: [REDACTED]  
Subject: FW: HSR Issue

Mike -

I was hoping to get your thoughts on the following:

Facts

- 1) Parent is a corporation which is its own ultimate parent entity.
- 2) Limited Partnership A is its own ultimate parent entity for HSR purposes; Parent may be a minority investor in such entity.
- 3) Parent will form Newco, an unincorporated entity.
- 4) Limited partners of Limited Partnership A will, in effect, exchange their interests in such limited partnership to Newco in exchange for the same economic interest in Newco (equal to the limited partner's original capital contribution minus any accumulated loss/deficit). For tax and other reasons, it is anticipated that Parent or a wholly-owned subsidiary will "purchase" the interests from the limited partners of Limited Partnership A and then sell the limited partners shares in Newco although no money will change hands. Limited Partnership A will become a wholly-owned subsidiary of Parent;
- 5) Newco will be its own ultimate parent.
- 6) Newco will enter into a management agreement with Limited Partnership A pursuant to which it will provide management services to Limited Partnership A in exchange for a certain fee.
- 7) Assets of Limited Partnership A consist of cash, furnishings, fixtures and equipment and licenses (there is no real estate or intellectual property involved).

Analysis - Acquisition of LP Interests

Assuming the relevant jurisdictional tests are met, Parent will have a filing obligation as an acquiring person gaining control of Limited Partnership A (with Limited Partnership A filing as an acquired person). As provided for in 801.10(d), the value of the non-corporate interests held as a result of the acquisition is the sum of the acquisition price of the interests to be acquired and the fair market value of any of the interests in the same unincorporated entity held by Parent (or any controlled entity) prior to the acquisition, if any. Assuming Limited Partnership A holds non-exempt assets of less than \$59.8 million, the acquisition will be exempt under 802.4. (We're assuming a closing after February 21st.)

Analysis - Formation of Newco

There is no filing obligation in connection with the formation of Newco as no one will control Newco for HSR purposes.

If I'm missing anything please let me know.

Thanks,

Agree  
m  
1/24/07