

801.40
801.50

Verne, B. Michael

From: [REDACTED]
Sent: Friday, February 16, 2007 12:38 PM
To: Verne, B. Michael
Subject: JV Formations

Hi Mike,

We've recently been asked to assess the reportability of several joint venture formations and just want to be sure that we are applying the correct analytical framework.

The "formations" are usually structured in one of two ways:
(We can assume that the size of transaction and person tests are met and that the transactions are not otherwise exempt -- e.g. by way of 802.4 and 802.30, etc.)

Structure 1: "True" or "One-stage" JV formation

A and B form a new corporation "JV Corp." A contributes X assets in return for 50% of the voting securities of JV Corp and B contributes Y assets in return for 50% of the voting securities of JV Corp.

Filing Obligations: A and B each have to file an HSR as an acquiring person for their respective acquisitions of 50% of the voting securities of JV Corp pursuant to 801.40 and complete Item 5(d) of the HSR Form. JV Corp is the acquired person but is not required to file pursuant to 802.41.

Structure 2: "Two-stage" formation

A forms a wholly-owned subsidiary "JVSub Corp" and contributes X assets (or the voting securities of X subsidiary) to JVSub Corp.
B contributes Y assets (or the voting securities of Y subsidiary) to JVSub Corp in exchange for 50% of JVSub Corp's voting securities.

Filing Obligations: The formation of JVSub Corp is exempt pursuant to 802.30. A must file as an acquiring person for its acquisition of Y assets/voting securities and as an acquired person for B's acquisition of 50% of JVSub Corp. Similarly, B must file as an acquired person for A's acquisition of Y assets/voting securities and B also must file as an acquiring person for its acquisition of 50% of JVSub Corp.

Is our analysis correct, or should we be treating both types of structures under 801.40 (or 801.50 for non-corporate JVs).

We often receive these types of reportability questions before the structure is fully defined, with the parties wanting to file on the basis of a signed MUO or LOI. If our analysis is correct, does the PNO have a preference for how we treat JV formations when it's not entirely clear which of these two structures will be adopted. Would the filing(s) still be valid if the alternate structure is adopted (note that the acquired

1) 801.40 or 801.50

2) If JV Sub Corp is being formed solely for the purpose of holding the assets contributed by A and B, and if the contributions of the assets by both and the acquisition of interests in JV Sub Corp occur contemporaneously, I'd treat this exactly like #1.

B. Rudolph
2/26/07