

Verne, B. Michael

802.9

From: [Redacted]
Sent: Sunday, June 10, 2007 3:48 PM
To: Verne, B. Michael
Subject: Solely for purpose of investment

Mike,

I have a situation in which a Company A (a seller) will acquire share consideration in Target T that would otherwise trigger a filing but for application of the solely for the purpose of investment exemption. Company A will acquire less than 3% of the voting securities of Target T and its investment will be entirely passive.

Company A holds a 15% economic interest in Partnership P, but does not control Partnership P for HSR purposes. Partnership P holds a 5-7% interest in the voting securities of Target T and has representation on Target T's board of directors. It is likely that in respect of Target T, Company A and Partnership P will have aligned votes, but there is no agreement that they will vote their shares together.

Do we need to combine Company A and Partnership P's holdings in respect of Section 802.9 tests? If so, their combined holdings in Target T might be over 10% (it is unclear) and if the rules dictate that I must consider Company A and Partnership P to be acting together, then Partnership P's board rights would seem to convert Company A's investment from passive to active.

I am inclined to think I do not need to combine these two entities for the purposes of Section 802.9. Extrapolating from Interpretations 150 and 196, which are admittedly not exactly on point, it seems that one does not need to combine when entities are "under common de facto control when the control tests are not satisfied."

Could you let me know whether you agree with my conclusion or need additional information in order to provide some guidance? As always, thanks for your help.

Craig



I AGREE THAT YOU DO NOT
NEED TO COMBINE THESE TWO
ENTITIES FOR PURPOSES OF
802.9

[Handwritten Signature]
6/10/07

This communication (and any information or material transmitted with this communication) is confidential, may be privileged and is intended only for the use of the intended recipient. If you are not the intended