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Verne, B. Michael

From: [REDACTED]
Sent: Friday, July 06, 2007 12:07 PM
To: Catt, Malcolm L.; Verne, B. Michael
Subject: UPE, loan guarantees, and reportability

Mike/Malcom-

Good morning.

I had a couple of quick questions regarding reportability and disclosure and I was hoping I could get your thoughts.

Our client is a privately-held foreign bank (Bank). The Bank is establishing an equity fund for the purposes of making an acquisition of assets and noncorporate interests here in the US. The fund will be a foreign partnership, will have an affiliate who acts a GP who will manage the day to day operations, and there will be 3 limited partners who will invest in the fund. No limited partner will have the right to 50% or more of the profits or assets upon dissolution. 1 limited partner will be an unrelated entity "A", the 2nd will be the Bank "B", and the 3rd will be a foreign trust ("C"), that would be set up to meet the requirements to be considered as its own UPE (Int. 44).

1. Because no one will have 50% or more, my thought is that the Fund would be its own UPE for HSR reporting purposes. Please confirm.
2. Does the presence of a fair market value loan (LIBOR + 25 basis points) guarantee by B to either C or C's subsidiary change the analysis, conferring some kind of control, such that this could require reporting by the Bank itself (or the Bank's UPE) instead of the Fund or infer control of the Fund?
3. The Fund will have a balance sheet at the time of the acquisition well below the smaller size-of-person threshold. It will raise equity by drawing down committed capital (cash) from the limited partners who will subscribe additional shares in the Fund. Would the contribution of cash in the form of additional share subscriptions (which would certainly drive it up to meet size of person) be counted? Does it have to be reflected on the balance sheet? I am trying to reconcile Int. 127, 140, although they deal with loans--not sure whether they would be treated similarly.

Thank you. If you need any additional information or would like me to call, please let me know. I can be reached at [REDACTED] if you have any questions or need any additional information.

Best regards,

[REDACTED]

7/9/2007

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1. Confirm that the Fund is its own UPE

2. No

3. Not unless a new regularly prepared balance sheet is done prior to closing that shows the drawn down funds.

B
7/6/07