

802.41  
801.50(a)

**Verne, B. Michael**

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**From:** [Redacted]

**Sent:** Thursday, October 25, 2007 1:39 PM

**To:** Verne, B. Michael

**Subject:** Joint venture question

Hi, Mike -

I have another question for you in connection with the formation of a non-corporate joint venture ("Newco"). A and B (which are their own UPEs) are each contributing 25% of their membership interests in LLC 1 (which is also its own UPE) to Newco in exchange for less than a controlling interest in Newco. Others will contribute cash to Newco. We understand that the formation of Newco will not be reportable unless a person will control Newco and the jurisdictional thresholds are met.

However, regardless of whether the formation of Newco is reportable, it appears that there may also be a potentially acquisition of LLC 1 by virtue of the fact that Newco will hold 50% of its membership interests as a result of the formation.

*Scenario 1*

Assuming Newco is controlled by a partner ("Controlling Partner"), it seems Controlling Partner would need to make two HSR filings (and pay two fees) in connection with (a) Newco's formation and (b) obtaining control of LLC 1 as a result of formation. I assume that LLC 1 would also have to file as an acquired person (in connection with Controlling Partner's obtaining control of it). Do you agree? Suppose that Controlling Partner contributed \$100 million cash (and no other consideration) to the formation of Newco (and that the total assets of Newco, determined in accordance with the rules, are \$200 million and the collective value of the 50% interest in LLC 1 can be reasonably estimated to be \$80 million). I assume \$100 million would be the transaction value reported by the Controlling Partner in connection with the formation and the value reported in connection with obtaining control of LLC 1 would be \$80 million.

*Scenario 2*

Assuming that Newco is its own UPE, there would be no filing in connection with the formation but Newco would have to file in connection with obtaining control of LLC 1, assuming that the jurisdictional thresholds are met and no other exemption applies. LLC 1 would file as an acquired person in this scenario too. Do you agree? Suppose that the total assets of Newco are \$200 million but the value of the 50% interest in LLC 1 is, again, reasonably estimated to be \$80 million. I assume \$80 million would be the reported transaction value.

Please let me know if I have totally messed this up.

Thanks,

[Redacted]

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Scenario 1: There would only be one filing and one fee for Controlling Partner as an acquiring person in the formation of Newco. Newco is not required to file as an acquired person in the formation (see §802.41 - Whenever any person(s) contributing to the formation of an entity are subject to the requirements of the Act by reason of §801.40 or §801.50 of this chapter, the new entity need not file the notification required by the Act and §803.1 of this chapter.

Scenario 2: There would be no filings required. No one is receiving a controlling interest in the formation, so that is exempt. The Newco is not deemed to be acquiring a controlling interest in LLC1 (see §801.50(a) - In the formation of an unincorporated entity (other than in connection with a consolidation), even though the persons contributing to the formation of the unincorporated entity and the unincorporated entity itself may, in the formation transaction, be both acquiring and acquired persons within the meaning of §801.2, the contributors shall be deemed acquiring persons only and the unincorporated entity shall be deemed the acquired person only.)

*Bruce*  
10/25/07