

801.2  
801.10

Verne, B. Michael

**From:** [Redacted]  
**Sent:** Tuesday, December 11, 2007 4:57 PM  
**To:** Verne, B. Michael  
**Cc:** [Redacted]  
**Subject:** Nonprofit Fact Pattern

Mike

Thank you for taking the time to speak with us yesterday. As discussed, we seek to confirm that the proposed transaction, as further described below, would be classified as an acquisition of assets for purposes of determining whether the notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), are applicable.

Our client ("Nonprofit A") operates in the health services industry and will be acquiring the membership interests (the "Interests") of another nonprofit entity which also operates in that industry ("Nonprofit B"). Nonprofit A and Nonprofit B are both nonprofit corporations organized under the laws of the State of Wisconsin. As a result of the transaction and its acquisition of the Interests, Nonprofit A will serve as the sole member of Nonprofit B and will ultimately control the activities of Nonprofit B. Prior to this transaction, Nonprofit B did not have any members. In exchange for the Interests, Nonprofit A will contribute approximately \$30 million to Nonprofit B for the building of a new hospital, with the remainder to be provided by Nonprofit B. You indicated that, for purposes of determining whether this is a reportable transaction under the Act, the above scenario would constitute an acquisition of assets. You noted that certain other FTC Informal Opinions treating the acquisition of interests in a nonprofit corporation to be an acquisition of voting securities were based on a relatively unusual provision of Michigan law which permits nonprofit corporations to issue stock constituting voting securities. In the present context, the acquisition of interests in Nonprofit B should be analyzed as an acquisition of assets for purposes of the Act.

Further, pursuant to Premerger Notification Rule 801.10, the value of assets to be acquired by Nonprofit A would be equal to the fair market value of such assets, as determined in good faith by the board of Nonprofit A (or another entity as otherwise designated by the board). You indicated that the fair market value of the Interests would not include any amounts contributed by Nonprofit A to Nonprofit B for the construction of the new hospital. Accordingly, if the board of Nonprofit A determines in good faith that the fair market value of the Interests is less than \$59.8 million, this transaction will not be reportable under the Act. Please advise if any of the above is inconsistent with our earlier conversation. Again, we appreciate your assistance with this matter.

Thank you,

[Redacted]

[Redacted]

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12/12/2007

Just one ultra-picky point. In the last paragraph you refer to "Interests" in two places that should read "assets". Otherwise looks fine.

BW  
12/12/07