

**From:** [REDACTED]  
**Sent:** Wednesday, May 14, 2008 3:00 PM  
**To:** Verne, B. Michael  
**Subject:** HSR Advice - Formation of Joint Venture Corp. and Acquisition of Voting Securities or Assets

Set forth below is the description of transaction, analysis, and conclusions with respect to a proposed transaction to form a joint venture corporation and for the new corporation to acquire 100 percent of the voting securities of an existing service business. We also describe an alternative transaction structure.

Please confirm that, based on the facts described, you agree with the conclusions set forth below, or clarify how the proposed transaction should be analyzed for purposes of determining whether some or all of the parties must observe the HSR notification and waiting period requirements.

1. Description of Transaction.

(i) Three separate private investment funds (individually "Fund" and collectively "Funds"), and a corporation that operates a services business ("ABC"), expect to execute a Stock Purchase Agreement ("SPA"), pursuant to which a new C-corp. organized by the Funds (ABC I), will acquire 100 percent of the voting securities of ABC for a total purchase price of \$153M in cash.

(ii) The Funds will make cash equity contributions to ABC I of \$28M, \$28M, and \$10M, respectively, or a total of \$66M, and will acquire approximately 34 percent, 34 percent, and 12 percent, respectively, of the voting securities of ABC I, with a value equal to each Fund's respective equity contribution.

(iii) ABC's shareholders (three individuals), and three or four other ABC employees, will contribute a total of \$17M in cash to ABC I and will acquire a total of 20 percent of the voting securities of ABC I.

(iv) The parties may use an alternative transaction structure, such that ABC transfers its non-cash assets (described below) to ABC LLC. ABC I will acquire 80 percent of the ownership units of ABC LLC for \$133M in cash, and ABC's shareholders and employees will retain a total of 20 percent of the ownership units of ABC LLC.

(v) A bank unrelated to the parties ("Bank") will provide senior debt to ABC I of \$70M. The Bank will not acquire any voting securities (including convertible voting securities) of ABC I, and the senior debt will be non-recourse to the Funds and individual shareholders of ABC I (i.e., none of these parties will guarantee repayment of the debt).

(vi) None of the Funds is under common ownership or control with any other Fund, and no Fund or individual shareholder of ABC I will have the present right to designate 50 percent or more of the directors of ABC I.

(vii) ABC will have total assets of \$11M at closing, excluding \$14M in cash and cash equivalents that ABC will distribute to its shareholders prior to closing.

(viii) The Funds each will determine the fair market value of the assets held by ABC at closing, and

expect such FMV to be less than \$63.1M.

(ix) The parties will fund ABC I and consummate ABC I's acquisition of ABC voting stock (or ownership units in ABC LLC) in a single closing.

(ix) Each Fund has annual net sales and/or total assets in excess of \$126.2M.

## 2. Analysis and Conclusions.

(i) No Fund or individual will acquire ABC I voting securities with a value in excess of \$63.1M, the current minimum size of transaction threshold.

(ii) Pursuant to Rules 802.4 and 801.21(a), cash contributed by the Funds is excluded and each Fund's acquisition of ABC I voting securities is exempt if the Fund determines that the fair market value (FMV) of ABC assets at closing (i.e., total assets less cash and cash equivalents that ABC distributes to its shareholders prior to closing), is less than \$63.1M. The same analysis and conclusion apply to the alternative transaction structure described in Item 1(iv), except that ABC I or its designee determines FMV.

(iii) The Funds and ABC I may use normal valuation methods to determine the FMV of ABC's assets, and are not required to impute a FMV for same equal to the aggregate cash purchase price, net of bank debt, that the Funds will pay for ABC I's voting stock, or that ABC I will pay to acquire ownership units of ABC LLC.

(iv) Each acquisition of ABC I voting securities by ABC shareholders is exempt under Rule 802.4, because the only asset that ABC I will hold at closing is cash for the purchase of ABC voting stock, which is exempt under Rules 801.21(a) and 802.4.

(v) Under the alternative transaction structure, each acquisition of ABC LLC ownership units by ABC shareholders and employees is exempt pursuant to Rules 802.4 and 802.30(c), as acquisitions of assets contributed by the acquiring person to a new entity (ABC LLC) upon its formation. Additionally, such acquisitions are not covered by Rule 801.50, because none of these individuals will acquire control of ABC LLC.

(vi) For the above reasons, no party is required to observe the notification and waiting period requirements under the HSR Act prior to consummating the transaction.

Best regards, [REDACTED]

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I agree that none of the acquisitions of ABC1 voting securities or alternatively ABC LLC membership interests is reportable. The acquisition of ABC by ABC1 is non-reportable because ABC1 is its own UPE and will not have \$12.6 MM in assets and the size-of-transaction is less than \$252.3 MM.

BW  
5/15/08