

802.3

**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Thursday, June 05, 2008 4:41 PM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** HSR Question

Dear Mr. Verne:

I have a question regarding the application of the HSR rule 802.3 to a proposed transaction. In the proposed transaction, the acquiring person will be acquiring (A) 80% of the voting stock of a corporation (the "Mine Operator") that owns coal mining exploration and production equipment and surface land surrounding a coal mine for \$25 million in cash and (B) railroad assets of an affiliated company (the "Mine Owner") that provide rail access to the coal mine for \$50 million in cash. The Mine Owner also owns the coal mine and all the coal reserves. The acquiring person will not be acquiring any assets or voting securities of the Mine Owner except the rail assets, i.e., it will not be acquiring any of the coal reserves. Currently, the Mine Operator and the Mine Owner are each owned by the same ultimate parent entity.

My question is, assuming that the coal mining exploration and production equipment and surface land being acquired in the transaction constitute "associated exploration or production assets" under HSR Rule 802.3, would the acquisition of the voting securities relating to these assets qualify for \$200 million threshold under HSR Rule 802.3 despite the fact that the acquiring person was not, in fact, acquiring any coal reserves in the transaction?

Thank you very much for help.

Sincerely,

[REDACTED]

NO - ASSOCIATED EXPLORATION OR PRODUCTION ASSETS MUST BE ACQUIRED WITH RESERVES TO BE EXEMPT UNDER

802.3

*BM*  
6/9/08

**CONFIDENTIALITY NOTICE**

**THIS E-MAIL TRANSMISSION (AND/OR THE ACCOMPANYING ATTACHMENTS, IF ANY) MAY CONTAIN CONFIDENTIAL INFORMATION INTENDED SOLELY FOR THE USE OF THE RECIPIENT(S) NAMED ABOVE. IF YOU ARE NOT AN INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR USE OF ANY SUCH INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, KINDLY NOTIFY THE SENDER AND DELETE THE TRANSMISSION AND ALL ATTACHMENTS. THANK YOU.**

*To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.*