

7A (c)(1)

Verne, B. Michael

From: [Redacted]  
Sent: Friday, June 13, 2008 4:57 PM  
To: Verne, B. Michael  
Subject: 802.1 -- Ordinary Course

Mike,

We are analyzing a proposed transaction that we believe is nonreportable under HSR, and we would like to confirm with you that our analysis is correct.

Company A and Company B are discussing a possible transaction whereby Company B will acquire certain assets from Company A. The size-of-person and size-of-transaction tests appear to be satisfied. At issue is whether the transaction is exempt from the filing requirements of the HSR Act pursuant to the "ordinary course of business" exemption set forth in Section 802.1 of the Rules.

Company A is a large financial institution that provides a wide array of banking, financial, securities, and credit services. Company A, through a wholly-owned subsidiary, operates a "prime brokerage" business that provides a "bundle" of services to hedge funds, which services include secured financing, securities settlement, custody, capital introduction, securities lending and brokerage, custom technology and IT solutions. The prime brokerage business is a specialized part of the broader securities brokerage operations of Company A, has a specialized sales force, and accounts for only a modest percentage of the revenues Company A generates through its provision of the types of services marketed to hedge fund clients through the prime brokerage business. Last year, the prime brokerage business generated approximately 25% of the revenues generated by Company A in its overall securities brokerage business. We understand that the prime brokerage services as compared to Company A's securities and financial services overall, represents a significantly smaller percentage.

Company A provides securities brokerage, credit facilities, financing, and settlement services to many clients, both institutional and retail, and employs hundreds of individuals to provide these services to other clients.

Company A will sell to Company B substantially all of the assets related to the prime brokerage business, including client relationships, accounts, goodwill, certain intellectual property, and other tangible assets necessary to operate the prime brokerage business. In addition, Company B will offer employment to the staff that was dedicated to the prime brokerage business and will take over three regional offices.

Company A will continue to provide securities brokerage and other financial services to an array of clients. Company A will no longer provide information technology and reporting services to hedge funds for execution purposes, but will continue to offer, sell, or trade any type of financial product to any customer, including hedge funds.

We believe that the sale of Company B's prime brokerage business is exempt under Section 802.1 as a transfer in the ordinary course of business. Although we are aware that a sale of an "operating unit" would not be exempt, we believe that Company A is not selling an operating unit within Section 802.1 because, as indicated above, Company A will continue in the financial and brokerage services industry after this transaction. See Informal Interpretation 0706003, June 1, 2007; 0511009, November 11, 2005; 0404005, April 5, 2004.

Please let us know whether you concur with this analysis. If you need any additional information, we would be happy to provide it.

Many thanks,

[Redacted]

[Redacted]

AGREE  
BM  
6/16/08