

801.1

Verne, B. Michael

From: [REDACTED]
Sent: Monday, November 17, 2008 11:50 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Recent discussion

Mike --

This email is to confirm the conversation we had on Thursday, November 13, 2008, during which you agreed that the proposed acquisition we described is exempt from the Hart-Scott-Rodino notice and waiting period requirements.

The proposed acquisition would be made by a newly formed partnership controlled by the central bank of a foreign state. Although the central bank is referred to as a "joint stock company," it is formed under specific national legislation and is restricted by its charter to engaging in the activities typically performed by central banks. The central bank's governing board is appointed by the government of the foreign state. The central bank has nominal voting shares held by diverse shareholders -- primarily political subdivisions of the foreign state, but also some private citizens. The shares represent a de minimis economic interest in the central bank's assets and annual income, give extremely limited rights to vote (for example, the shareholders can approve the final annual accounts of the central bank after those accounts have been approved by another government body) and allow no vote for the election of the governing board. We believe that the central bank is not an "entity" under § 801.1(a)(2) because it is an agency of a foreign government and, therefore, cannot be an "Acquiring Person."

The central bank is not making the acquisition directly. Instead, the acquisition will be made by a newly formed partnership that will be wholly owned -- indirectly -- by the central bank. (The partnership will acquire financial assets (some of which are troubled) from a large commercial bank based in the foreign state; these assets are currently held by the commercial bank as well as certain of its subsidiaries and branches, some of which are located in the U.S.) Because the acquiring party will be a partnership and not a corporation, it too is not considered an "entity" under § 801.1(a)(2).

The newly formed partnership will be owned directly by two newly formed corporations both of which will be wholly owned by the central bank. One corporation will be the general partner of the newly formed partnership and the other will be the limited partner. The two partners (the only two corporate entities in the ownership chain) are intermediary parties formed by the central bank to insulate the central bank in, and otherwise facilitate, this transaction and function solely to hold the partnership interests in the actual acquiring partnership. You agreed that the two partners are not "engaged in commerce" under § 801.1(a)(2).

Accordingly, because under § 801.1(a)(2) no "entity" will be making an acquisition, the proposed acquisition is exempt from the HSR requirements.

Please confirm that we have set forth accurately our conversation.

AGNEE
[Signature]
11/17/08

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