

801.1(b)

Verne, B. Michael

From: [Redacted]
Sent: Monday, December 22, 2008 5:56 PM
To: Verne, B. Michael
Cc: [Redacted]
Subject: Delaware Business Trust

Mike,

Please let me know if you are available now or in the morning to discuss the HSR treatment of a Delaware business trust.

We are aware of prior PNO interpretations that say, for purposes of determining "control," unit issuing business trusts are governed by rules covering non-corporate interests not by rules covering 801.1(c)(3)-(5) trusts.

In our situation, the Delaware business trust issues a "certificate" rather than a "unit." The function is the same, which is to provide the holder with an economic interest in the trust. In our situation, the Trust has issued a single certificate to A, which is entitled to more than 50% of the Trust's revenues or to more than 50% of the Trusts assets on dissolution. We believe A controls the Trust and that, therefore, a transfer of assets from the Trust to A would be exempt as an intraperson transfer under 802.30.

Please let me know when it would be convenient for us to discuss this situation, unless you have all the facts you need to make a determination.

Best holiday regards,

[Redacted]

[Redacted]

AGREE -
BM
12/23/08

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