

801.50

Verne, B. Michael

From: [Redacted]

Sent: Wednesday, February 18, 2009 11:42 AM

To: Verne, B. Michael

Subject: Formation of a Non-Corporate Entity

Dear Mike,

Thanks for taking the time to talk with me yesterday regarding certain issues surrounding the formation of a non-corporate entity. I am confirming the following facts and analysis we discussed and would appreciate your confirmation that you agree with the conclusions below.

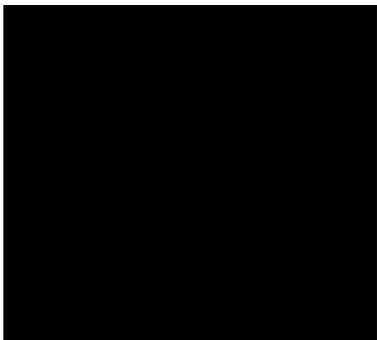
1. An existing private equity fund ("Old Fund") is transferring some investments to a newly-created fund ("New Fund," a non-corporate entity).
2. Old Fund holds interests in New Fund but will not control New Fund.
3. New Fund's interest holders consist of Old Fund, Old Fund Investors, and third-party investors ("New Investors").
4. New Fund has been formed but is still in the process of being capitalized and recruiting New Investors.
5. When capitalization is complete, no investor will control New Fund, as defined in 16 C.F.R. § 801.1(b)(1)(ii).
6. Old Fund intends to contribute a majority interest in a publicly-traded company (Company) with a total value over \$65.2 million to New Fund, but has not yet done so.
7. Company was not contributed earlier in the formation of New Fund because the parties are still determining whether certain (non-HSR) regulatory approvals or notices will be required.
8. New Fund has made small investments so far using some of the funds contributed by New Investors.

We discussed whether the contribution of Company to New Fund should be viewed as part of the formation of New Fund, rather than an acquisition by New Fund of Company. Because Old Fund is receiving only interests in New Fund as consideration (not cash or other compensation), the contribution is properly viewed as part of the ongoing "formation" of New Fund. We discussed anticipated additional contributions from Old Fund to New Fund and how to distinguish between contributions viewed as part of the "formation" and those that should be characterized as acquisitions by New Fund. In sum, if Old Fund is receiving only interests in New Fund as consideration, then the contribution would be part of the formation. But if New Fund uses cash or other consideration to make acquisitions, those acquisitions would be viewed as new acquisitions and not as part of the formation of New Fund.

Here, because the contribution of Company is properly viewed as part of the formation of New Fund, then the transfer to New Fund would not be reportable because no investor will have control of New Fund (16 C.F.R. § 801.50).

Again, many thanks for your help.

Best regards,



AGREE -
BM
2/18/09