

802.9

Verne, B. Michael

From: [Redacted]  
Sent: Tuesday, March 03, 2009 10:13 AM  
To: Verne, B. Michael  
Cc: [Redacted]  
Subject: Question on 802.9 Exemption

Mike,

I am writing to ask your guidance about whether a transaction qualifies for the "investment-only" exemption under Rule 802.9 despite some possible minor competition between the parties.

In this transaction, Company X is selling a business unit to Company Y in a clearly reportable transaction. As part of the consideration for that transaction, Company X will receive voting securities in Company Y, which are valued at more than \$65.2 million but which constitute less than 10% of Company Y's outstanding securities. The question is whether Company X is exempt from filing as an acquiring person (Company X will file as an acquired person in any event).

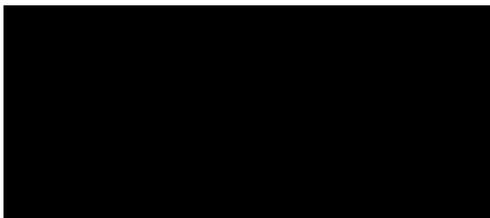
Company X intends to hold the securities for only a short period and a shareholders agreement between the parties will prohibit Company X from nominating board candidates, proposing corporate action, or soliciting proxies. There also will be no common officers or directors.

The only one of the relevant "indicia" listed in the Statement of Basis and Purpose (and in Informal Interpretation No.16) at issue is that there might be some minor competition between Company X and Company Y in businesses unrelated to the transaction. (We are still learning about the nature of this competition).

In this situation, is the extent of the competition between the parties the determining factor in assessing whether the Rule 802.9 exemption applies? If so, can you provide any guidance on how to assess the extent of the competition? Does the existence of the shareholders agreement in this case (which essentially prohibits anything other than passive investment) mitigate the existence of any minor competition between the parties?

Any guidance you can provide would be greatly appreciated,

Regards,



AGREE THAT THE EXEMPTION IS STILL AVAILABLE.

*[Signature]*  
3/4/09