

802.40

**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Thursday, May 07, 2009 3:54 PM  
**To:** Verne, B. Michael  
**Subject:** HSR Merger Question  
**Importance:** High

Michael,

My name is the [REDACTED]. I'm the Controller for [REDACTED]. [REDACTED] has just signed an agreement to merge with a smaller credit union in our area, with [REDACTED] recognized as the acquiring or "continuing credit union." [REDACTED] has approximately \$1.6 billion in assets while the other institution has approximately \$200 million in assets.

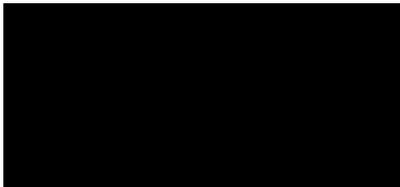
The reason for my email is to find out whether or not [REDACTED] is required to file a Premerger Notification Form with the FTC. I initially believed so but subsequently read the *Exemption Rules* within *section 802*. Under section 802.40 (shown below) it states that an entity is exempt from the requirements of the Act if the entity will be a not-for-profit as defined under the IRS code sections 501(c) or (d). Both entities are considered section 501(c) 14 organizations and file all required tax returns under that designation. I wanted to confirm whether we are exempt from filing the Premerger Notification Form based on this information.

**§ 802.40 Exempt formation of corporations or unincorporated entities.**

The formation of an entity is exempt from the requirements of the Act if the entity will be not-for-profit within the meaning of sections 501(c)(1)–(4), (6)–(15), (17)–(20) or (d) of the Internal Revenue Code.

[70 FR 11514, Mar. 8, 2005]

Your assistance in this matter is greatly appreciated. Thank you.



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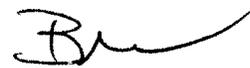
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5/8/2009

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This is not exempt under Section 802.40. That exemption only applies to the formation of a new not-for-profit corporation. We receive a number of filings for credit union mergers each year. I have attached a link to a letter from CUNA confirming the procedure for determining reportability of a credit union merger.

**<http://www.ftc.gov/opinions/0205025.htm>**

  
5/8/09