

801.50
802.4

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, May 20, 2009 9:36 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Confirming HSR Guidance re Rule 801.50 Transaction

Dear Mr. Verne:

Thank you for speaking with [REDACTED] and me on Friday, May 15 regarding a proposed formation of an unincorporated entity governed under Rule 801.50. The purpose of this correspondence is to summarize the HSR reporting conclusions we discussed.

The proposed transaction that we are assessing relates to the formation of a new unincorporated entity (Newco) by Company A and Company B. Company A will contribute minority interests in existing LLCs, and Company B will contribute cash. Company A and Company B will each acquire a 50% interest in Newco.

Rule 802.4(a) provides for an exemption from the HSR filing requirements based upon any exemption found within the HSR Act or any of the HSR rules of practice as long as the new unincorporated entity does not have non-exempt assets meeting or exceeding the HSR threshold then in effect.

For Company A, Newco's exempt assets consist of the cash contributed by Company B (pursuant to Rule 801.21) and Company A's own contribution of its existing minority LLC interests (pursuant to Rule 802.30(c)). Because all of the assets of Newco are exempt with regards to Company A, Company A's acquisition of non-corporate interests in Newco is exempt under Rule 802.4.

For Company B, Newco's exempt assets include the cash contributed by Company B (pursuant to Rule 802.30 (c)), as well as the minority LLC interests being contributed by Company A that will not be included within Newco for HSR purposes, and thus do not count toward the \$50 million (as adjusted) limitation for non-exempt assets (pursuant to Rule 802.4(a)). Because all of the assets of Newco are exempt with regards to Company B, Company B's acquisition of non-corporate interests in Newco is exempt under Rule 802.4. Furthermore, Company B's acquisition of the minority LLC interests contributed by Company A is not a reportable secondary acquisition governed by Rule 801.4 because the LLC interests contributed by Company A are minority interests.

Please let me know if this correspondence accurately presents our discussion. Thank you for your time and consideration in this matter.

Sincerely,

[REDACTED]

[REDACTED]

AGREE -
BM
5/20/09

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