

801.40

Verne, B. Michael

From: [REDACTED]
Sent: Monday, September 21, 2009 7:23 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Rule 801.40

Mike,

I am writing to seek your views on the filing obligations of the parties to the proposed transaction described below:

Company A (a corporation) and Company B (an LLC) plan to combine some of their businesses as follows:

Company X, through its wholly owned subsidiary X-sub (a corporation), owns approximately 40% of the interests in Company B. Company A will form Newco (a corporation) and contribute some its assets to Newco. Company X will contribute its interest in Company B through the merger of X-sub into Newco, with Newco surviving. Company X will receive Newco Common Stock as merger consideration. Company X will also sell some of its Newco Common Stock to Company A. Newco now has two shareholders, Company X (30%) and Company A (70%), and owns 40% of Company B and the contributed assets from Company A. Newco contributes the Company A assets to Company B in exchange for additional interests in Company B, and, as a result, Newco owns a majority of the interests in Company B.

We have analyzed this entire transaction as the formation of a joint venture under Rule 801.40 with Company A and Company X, each filing as acquiring persons and neither Newco nor Company B filing as acquired persons.

Do you agree with our analysis?

Thank you in advance.

[REDACTED]

AGASE
BN
9/22/09

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