

7A(c)(1)
802.4

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, October 20, 2009 3:32 PM
To: Verne, B. Michael
Subject: Ordinary Course of Business Exemption

Mike,

Buyer is entering into an agreement to acquire LLC interests in an investment fund (the "Fund") that focuses on making first lien loans. Investments made by the Fund must be approved by the investment committee of the Fund, which includes a representative of the ultimate parent entity of the Fund (the "Seller"), and a representative from the Fund's co-manager. The Fund has no employees and is currently co-managed by affiliates of its interest holders. Both the Seller and the Fund's minority interest holder (the "Minority Holder"), provide origination services to the Fund. The Fund's two co-managers provide underwriting and portfolio management services to the Fund and its affiliates. The Fund conducts no business other than making loans and servicing the loans in its portfolio, and has entered into sourcing agreements with each of Seller and the Minority Holder, through which the fund sources investment opportunities. The Fund is one of many investment vehicles managed by and/or majority owned by the Seller and its co-manager.

Buyer intends to purchase, directly and through one or more of its affiliates, the interests in the Fund held by the Seller, its Ultimate Parent Entity. As a result, Buyer will become the Ultimate Parent Entity of the Fund, which will effectively result in Buyer's ownership of a percentage interest in the current loan portfolio of the Fund. After the acquisition, Buyer and its affiliates will assume all management and sourcing obligations held by the Seller and its affiliates. After the sale of its interests in the Fund to Buyer, we understand that the Seller intends to continue making loans to middle market companies and will also continue to manage and own other funds.

The applicable dollar thresholds under the HSR Act are met by this transaction.

We have analyzed the transaction as an exempt acquisition made in the ordinary course of business under Section (c)(1) of the Act and Rule 802.1 as the Buyer is presently in the business of making loans such as those being acquired in the transaction and the Seller is not exiting the business of making such loans. See Informal Interpretation No. 0512015 (December 16, 2005). Also relevant to our analysis is the fact that Buyer is not acquiring any employees or other business operations of the Fund.

We also believe that the transaction is exempt under Section (c)(2) of the Act and Rule 802.4, as the underlying assets of the Fund are obligations that do not carry the present right to vote for directors and the Fund does not have non-exempt assets valued above the size-of-transaction threshold.

Please let me know at your earliest convenience if you agree with our analysis of the applicability of the exemption, or whether you require additional facts or would like to discuss.

Thanks,

[REDACTED]

[REDACTED]

AGREE - EXEMPT
UNDER 802.4
VIA 7A(c)(1)
BM
10/20/09

To ensure compliance with requirements imposed by U.S. Treasury Regulations, [REDACTED] informs you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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