

801.50

Verne, B. Michael

From: [REDACTED]

Sent: Thursday, July 15, 2010 7:26 PM

To: Verne, B. Michael

Mike,

I am preparing an HSR filing with respect to two transactions based on the same Purchase Agreement. The first transaction ("Transaction #1") involves the acquisition of non-corporate interests. My client, X, is the UPE of the acquired person in Transaction #1.

The Purchase Agreement contemplates the possible formation by Buyer and X of a new LLC ("Newco"), 51% of which will be owned by Buyer and 49% of which will be owned by X ("Transaction #2"). In the event certain parameters and criteria are met, Buyer has the option to elect to participate with X in the formation of Newco. In the event Buyer elects to participate in the formation of Newco with X, Buyer would contribute cash and X would contribute trade secrets and know-how in exchange for their respective interests in Newco.

With respect to Transaction #1 (the acquisition of the non-corporate interests), X is filing the report as an acquired person. In Transaction #2, under Section 801.50, X would be an acquiring person. However, since X is acquiring only a 49% interest in, and not acquiring control of, Newco, X's acquisition of the 49% interest in Newco would not be reportable. Further, the assets contributed by X to Newco are exempt under Section 802.30(c) and the cash contributed by Buyer is excluded under Section 801.21, resulting in the acquisition of the interests being exempt under Section 802.4.

I believe that X needs to complete its HSR report only as an acquired person with respect to Transaction #1 and does not need to complete the report as both an acquiring and an acquired person with respect to both transactions since its acquisition of the 49% interest in Newco is exempt. Please let me know if you agree.

Thank you.

[REDACTED]

[REDACTED]

[REDACTED]

AGREE
Bm
7/19/10