

801-11(e)
802.51

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, November 02, 2010 5:29 PM
To: Verne, B. Michael
Subject: HSR Question Regarding 801.11(e)

Dear Mike,

I would like to confirm that the proposed transaction described below is not reportable under the Hart-Scott-Rodino Antitrust Improvements Acts of 1976, as amended ("HSR Act").

Buyer directly will acquire all of the equity interests of each of 3 separate entities all of which are controlled subsidiaries of Seller. One of the subsidiaries is a United States LLC ("US Sub"). The other two subsidiaries ("Foreign Subs") are foreign issuers that in aggregate hold less than \$63.4 million in U.S. assets and in aggregate had less than \$63.4 million in sales in or into the United States during the most recently completed fiscal year, and accordingly the acquisition of Foreign Subs is an HSR Act exempt part of the proposed transaction under 802.51.

Please assume for purposes of this hypothetical that the value of the US Sub exceeds \$63.4 million (but is less than \$253.7 million), so that the transaction only is reportable if the HSR Size of the Parties Test also is met.

Buyer is its own ultimate parent and does not have a regularly prepared balance sheet. Under 801.11(e), Buyer will prepare a pro forma balance sheet to determine whether the Size of the Parties Test is met.

Am I correct that in preparing this pro forma balance sheet Buyer may exclude cash that will be used to acquire the Foreign Subs and for expenses incidental to the acquisition of those subsidiaries along with the cash to acquire US Sub and for expenses incidental to the acquisition of that subsidiary? Please also assume that if cash to acquire the Foreign Subs and for expenses incidental to the acquisition of those subsidiaries is excluded from the pro form balance sheet then the Size of the Parties Test is not met, but if this cash had to be included in the pro forma balance sheet then the Size of Parties Test would be met.

Based on my reading of 801.11(e)(ii), Buyer may subtract all the cash to make the transaction and for incidental expenses, regardless of whether some of that cash is attributable to the HSR exempt aspects of the transaction. This conclusion also is consistent with Informal

Staff Opinion 0910010.

Please confirm my understanding is correct and that the proposed transaction is not reportable under the HSR Act.

Thanks for your assistance,

[Redacted]

[Redacted]

*ACLEK
B
11/9/10*

The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the [Redacted] client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.