

801.4

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, December 14, 2010 11:28 AM  
**To:** Verne, B. Michael  
**Subject:** HSR Question

Hi Mike,

I've got a somewhat complicated deal I wanted to run by you to make sure I'm handling the HSR correctly.

PE Fund A (its own UPE) filed for the acquisition of ~23% of the voting securities of ZCorp for ~\$415 million; this transaction recently closed. Several other PE funds (the "Investors"), all separate persons, also acquired smaller percentages of ZCorp; their acquisitions were exempt because either the size-of transaction or size-of persons threshold was not met. In the aggregate, Fund A and the Investors acquired 43% of ZCorp for \$760 million.

Fund A and the Investors have now decided to restructure their holdings to "pool" their shareholdings within a single holding company. They will form a HoldcoLP to which Fund A and each of the Investors will contribute their shares of ZCorp in exchange for LP interests in HoldcoLP. As a result, Fund A will hold 55% of HoldcoLP, which will hold 43% of ZCorp.

As I see the HSR analysis:

- The formation of HoldcoLP is a JV formation. Fund A's acquisition of 55% of HoldcoLP in connection with that JV formation is exempt under 802.4 because HoldcoLP's only assets will be a non-controlling interest in ZCorp.
- Each individual Investor's acquisition of LP interests in HoldcoLP is not reportable because it will not acquire control of HoldcoLP.
- Fund A's acquisition of control of HoldcoLP, however, results in a secondary acquisition of 43% of ZCorp valued at \$760 million. Since Fund A previously filed HSR to cross the \$126.9 million threshold, it will need to file HSR again for this restructuring because it intends to cross the \$634.4 million threshold.

In Item 2(b) of Fund A's HSR filing, I think I've got five (!) boxes to check : (1) formation of unincorporated JV under 801.50, (2) acquisition subject to 801.30 (type = secondary acquisition), (3) acquisition of voting securities, (4) secondary acquisition, and (5) acquisition of non-corporate interests.

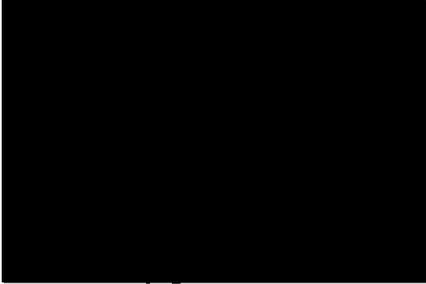
In response to Item 4(c), I would not include all the documents submitted by Fund A in the first HSR filing, since those relate to Fund A's initial acquisition of the shares of ZCorp, not to the restructuring transaction/JV formation/secondary acquisition. Indeed I expect there probably will be no 4(c) documents relating to the restructuring

transaction.

Do you agree with all of the above?

Thanks,

AGREE  
B  
12/14/10



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