

7A(c)(10)

**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Tuesday, December 14, 2010 10:45 AM  
**To:** Verne, B. Michael  
**Subject:** Question Regarding Partnership Distributions

Mike, we have a question regarding a partnership distribution.

Three partnerships that are minority shareholders of Company A are planning to transfer some of the stock of Company A (that they currently hold) to their partners as a distribution. Two of the partnerships ("PS1" and "PS2") have a common UPE ("UPE1") and the third partnership ("PS3") is its own UPE ("UPE2"). UPE1 is a limited partner of PS3 but does not "control" PS3 within the meaning of the HSR rules.

The distribution of Company A stock by PS1 and PS2 to UPE1, who is the controlling partner of PS1 and PS2 (the "Controlling Partner"), would not be a reportable transaction because it is a distribution to a controlling partner (Interpretation 213) and because the Controlling Partner was the "acquiring person" when the shares were acquired by PS1 and PS2 in an exempt transaction. However, the distribution of Company A stock by PS3 to the Controlling Partner of UPE1 raises a question for which we seek your advice. We have summarized the facts below:

- PS1, PS2 and PS3 plan to distribute some Company A stock not only to the Controlling Partner (who controls PS1 and PS2 but does not control PS3) but also to non-controlling partners in all three partnerships.
- As outlined in the table below, following the distribution of Company A shares from the three partnerships, the Controlling Partner will maintain beneficial ownership of fewer shares (and a smaller ownership percentage) of Company A, despite being distributed shares from PS3:

*Controlling Partner Shareholdings Summary:*

	Approximate Number of Shares Before PS1, PS2, PS3 Distributions	Approximate Number of Shares After PS1, PS2, PS3 Distributions
UPE1 direct ownership	0	1.5mm
UPE1 indirect ownership through PS1	13.4mm	10.5mm
UPE1 indirect ownership through PS2	2.5mm	2.5mm
UPE1 indirect ownership through PS3	0	0
Total Controlling Partner Beneficial Ownership (#)	15.9mm	14.5mm
Company A Fully Diluted Shares Outstanding	104.4mm	unchanged
Total Controlling Partner Beneficial Ownership (%)	15.1%	13.8%

The Controlling Partner's shareholdings in Company A decrease from 15.9mm to 14.5mm. The Controlling Partner's ownership percentage in Company A drops from 15.1% to 13.8%.

Question: Can UPE1 (the Controlling Partner) rely on Section 7A(c)(10) with respect to the distribution of Company A stock by PS3 to UPE1? Even though the number of shares held by UPE1 will increase due to the distribution from PS3, the overall percentage of shares held by UPE1 will decrease because PS1 and PS2 are distributing shares to their noncontrolling partners. If Section 7A(c)(10) is not available, is there another exemption that might apply? We note that the "solely for purposes of investment" exemption is not available because of board representation.

In closing, we believe that it seems illogical that the distribution from PS3 to the Controlling Partner is reportable under HSR when the distributions from PS1, PS2 and PS3 result in a material decline in the Controlling Partner's ownership position in the subject company.

We appreciate your help.

ACLEE  
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 12/14/10