

801.2

Verne, B. Michael

From: [Redacted]
Sent: Monday, January 31, 2011 4:59 PM
To: Verne, B. Michael
Subject: RE: Draft email

Michael,

Thank you for taking the time to speak to me earlier regarding the HSR reportability of the agreement described below.

Company A and Company B are currently parties to a marketing and distribution arrangement for a branded pharmaceutical product. Company A holds the NDA and related regulatory materials, as well as the relevant trademarks. There are no patents associated with the product. Company A also manufactures the product and sells it to Company B at a transfer price. Company B is the exclusive distributor of the product in the US and has a non-exclusive license to use Company B's trademarks to market and distribute the product. Company B made a lump sum payment to Company A to acquire the distribution rights, and also pays additional amounts annually (either as an aggregate payment or as a share of sales, depending on the calendar year).

The parties would like to terminate the current arrangement and enter into a new agreement whereby Company B would purchase the NDA and related regulatory materials, and Company A's books and records relating to the product. The purchase price, which exceeds the size of the transaction test, is a lump sum one-time payment, and Company B will no longer be obligated to make annual payments to Company A pursuant to their price arrangement. No intellectual property will be assigned. Rather, Company A will retain all trademarks and know-how associated with the product, and Company A will continue to supply the product to Company B pursuant to a supply agreement. Company B will acquire an exclusive license to use Company A's trademark in the US to sell the specific product.

I should also note that the companies exceed the relevant size-of-the-parties thresholds.

Several informal interpretations (including, e.g., #0812010) make clear that the trademark license is not an asset acquisition for purposes of HSR in this case. Accordingly, you indicated that the NDA and related materials are the only qualifying assets, and that the transaction is reportable if the portion of the acquisition prices allocable to the NDA and related materials exceed the relevant thresholds.

Regards,

[Redacted Signature]

AGREE -
[Handwritten Signature]

To ensure compliance with Treasury Department regulations, we advise you that, unless otherwise expressly indicated, any federal tax advice contained in this message was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at [Redacted]