

802.4
801.4
801.30

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, February 23, 2011 11:06 AM
To: Verne, B. Michael
Subject: RE: Your phone message

Hi Mike,

I'm definitely ready for warm weather.

Yes, the holding company also holds a minority interest in another LLC. Here is the structure:

Buyer will acquire up to 50% of Seller.
Seller holds 40% of LLC A and a minority interest in LLC B.
Buyer holds 40% of LLC A and a majority interest in LLC B.

The value of the maximum 50% of Seller is in the middle bucket, likely around \$500 million.
The value of the total LLC interests Buyer will hold as a result of its direct 40% plus its indirect 40% (through control of Seller) will be about \$3 billion.

The transaction is the result of the intended restructuring of the debt of LLC A; Buyer is using its share of the distribution to purchase half of Seller's interest.

The transactions we intend to report are:

1. Non-801.30 acquisition by Buyer of the voting securities of Seller.
2. Secondary 801.30 acquisition of LLC A by Buyer.

Buyer already controls LLC B, so that will not be reportable (nor would it meet the size-of-transaction threshold anyway).

For the purchase price of transaction 1, we are simply notifying it as the middle bucket because the number of securities purchased will be determined by the refinancing terms.

[REDACTED]

[REDACTED]

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]
Sent: Wednesday, February 23, 2011 10:58 AM
To: [REDACTED]

The acquisition of up to 50% of Seller (note – it would have to be at least 50% or nothing is reportable) would be exempt under § 802.4, so the only reportable transaction is the acquisition of 40% of LLC A combined with the 40% that Buyer already holds. The acquisition of the 40% of LLC A is not technically a secondary acquisition because LLC A is not an issuer and does not have voting securities. Consequently, it would not be covered by § 801.30(a)(4), which also applies only to secondary acquisitions of voting securities.* So, you would report the LLC acquisition as a non-801.30 transaction and do a fair market valuation for both the 40% being indirectly acquired via Seller and the 40% already held by Buyer.

* Note: this will be covered by § 801.30(a)(5) if we ever get the final rules published for the form changes.

BW
2/23/11