

Verne, B. Michael

From: Walsh, Kathryn
Sent: Friday, July 15, 2011 10:09 AM
To: Verne, B. Michael
Subject: FW: Associates

For our review when you are back.

From: [REDACTED]
Sent: Friday, July 15, 2011 9:34 AM
To: Walsh, Kathryn
Subject: Associates

Hi Kate.

Here are a few questions some of us are considering related to the definition of "associate." References to "examples" are those that were published by the FTC last week. We appreciate any guidance you can provide.

Thanks,
[REDACTED]

Example 1. ABC Investment Group ("ABC") has organized a number of investment partnerships – LLP1, LLP2, and LLP3, each of which is its own ultimate parent entity ("UPE"). ABC makes the investment decisions for all three. LLP1 is planning to make a reportable HSR acquisition. LP1's associates are: ABC, LLP2, LLP3. **[What about other entities managed by ABC? What about any entity that controls ABC or is controlled by ABC? What about other entities that are common control with ABC or with LLP2 and LLP3?]**

Example 3. PRS Corporation ("PRS") is its own UPE and is planning to make a reportable acquisition. EFG Group ("EFG") has the contractual power to determine the investments of PRS. EFG has contracted with Mr. X, who is not an employee of EFG, to act as its investment manager. PRS' associates are: EFG, any entity over which EFG has investment authority, any entity that controls or is controlled by EFG, Mr. X, any entity over which Mr. X has investment management authority, and any entity which is controlled by Mr. X. **[What about any entity under common control with EFG?]**

Example 4/Example 12. Is the GP of an LP always an associate of such LP? Example 4, among others, implies this. However, Example 12 can be read to imply that there be a contract between the GP and the LP under which the GP exercises investment discretion over the LP's investments. (If a company "controls" a partnership, is the UPE of the GP always an associate of such company?)

[REDACTED]

[REDACTED]

Is a company in the business of managing third party properties (quite common in the real estate industry) necessarily an associate of all entities whose properties it manages?

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Verne, B. Michael

From: Verne, B. Michael
Sent: Monday, July 18, 2011 9:54 AM
To: [REDACTED]
Cc: Walsh, Kathryn
Subject: Associate questions

Hi [REDACTED] - Kate and I have talked this through and here is our take. Let us know if any of this is unclear.

Other entities managed by ABC are associates
Any entity that controls ABC or is controlled by ABC is an associate
Other entities that are under common control with ABC, LP2 or LP3 are associates

Yes - any entity under common control with EFG is an associate

A GP is always an associate of the LP it is the general partner of
The UPE of a GP is always an associate of the LP it is the general partner of

[REDACTED]
[REDACTED]

No - managing third party properties is not the same as managing investment decisions. The property manager is not an associate of entities whose properties it manages