

801.1 (2)(2)

Verne, B. Michael

From: Verne, B. Michael
Sent: Thursday, July 28, 2011 9:56 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Inquiry Regarding Associates

- 1) Correct
- 2) Agree
- 3) Having the contractual authority to make acquisition decisions is enough even if it doesn't have the authority to make disposition decisions

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, July 27, 2011 2:48 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Inquiry Regarding Associates

Hi, Mike -

We would like to confirm the associate analysis with respect to the following structure commonly used by our private equity clients:

Funds A, B, X, and Y are their own UPEs. Funds A and B have the same general partner (GP) that is a limited partnership (LP) and that is its own UPE (the A/B GP). Funds X and Y have the same GP that is an LP and that is its own UPE (the X/Y GP). Each of A/B GP and X/Y GP, in turn, has a GP that is an LLC and that is its own UPE (A/B LLC and X/Y LLC, respectively). The investment decisions regarding Funds A and B are made by the investment committee of A/B LLC (A/B investment committee). The investment decisions regarding Funds X and Y are made by the investment committee of X/Y LLC (X/Y investment committee). Each of the investment committees is composed of individuals/natural persons. None of the individuals/natural persons has contractual authority to manage investments -- their authority comes from the organizational documents of the respective LLC. There is significant overlap in the two investment committees.

1. Assume that 50% or more of the individuals/natural persons that serve on the A/B investment committee and the X/Y investment committee are the same. Are we correct that only Fund A, Fund B, the A/B GP, and the A/B LLC are considered associates for purposes of an HSR filing made by Fund A as an acquiring person?

2. In addition, would you please confirm our understanding that a third party manager with the contractual authority to make investment decisions with respect to only the disposition of investments

(and not with respect to the acquisition of investments) is not considered to be an associate of the entity whose investment decisions it manages?

3. If a third party manager has only the contractual authority to make decisions with respect to the acquisition of investments (and not the disposition of investments) would it be considered to be an associate of the entity whose investment decisions it manages?

As always, many thanks for your guidance!

Best regards,

[Redacted]

[Redacted]

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of

[Redacted]

Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to [Redacted] and destroy this communication and all copies thereof, including all attachments.
