

802.4

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Monday, November 14, 2011 3:59 PM  
**To:** Verne, B. Michael  
**Subject:** HSR question regarding filing fee

Dear Mike,

A client, Corporation A, is creating an unincorporated joint venture ("JV") with Corporation B. Both parties are contributing assets to the JV. Corporation A will receive more than 50% of the JV's membership interests, while Corporation B will receive a minority interest.

Pursuant to 16 CFR § 801.50(b), Corporation A is subject to the requirements of the HSR Act since it will acquire non-corporate interests which confer control of the JV. On the other hand, Corporation B will acquire non-corporate interests which do not confer control of the JV and therefore its acquisition is not reportable under the HSR Act.

With regard to Corporation A's acquisition, the assets being contributed by Corporation A to the JV are exempt pursuant to 16 CFR § 802.30(c). The assets being contributed by Corporation B have a fair market value in excess of \$66 million. Therefore, upon closing, the JV will hold non-exempt assets valued in excess of \$66 million. As a result, Corporation A plans to file HSR in connection with the formation of the JV.

However, I am not entirely clear how we should calculate the fair market value of the non-corporate interests that Corporation A will hold as a result of the acquisition for purposes of calculating the filing fee.

I would think that (1) pursuant to 16 CFR § 802.4, the JV's exempt assets should be excluded from the calculation, and (2) the FMV of the non-corporate interests that Corporation A will hold is equal to (i) the value of the JV's non-exempt assets times (ii) Corporation A's percentage ownership of the JV.

By way of example, if the assets being contributed by Corporation A are worth \$1.4 billion and the assets being contributed by Corporation B are worth \$700 million, and Corporation A is acquiring 66% of JV, it seems to me that the FMV of the non-corporate interests that Corporation A will hold as a result of the acquisition is \$462 million (i.e., \$700 million x 66%) and therefore the filing fee is \$125,000.

Do you agree?

Many thanks in advance.  
Best regards,

[REDACTED]

Sorry – the 802.4 analysis has nothing to do with the size of transaction. Once you have determined that the transaction is reportable, the valuation of the non-corporate interests takes into account all assets held by the JV. See the attached tip sheet:

[http://www.ftc.gov/bc/hsr/802\\_4tipsheet.shtm](http://www.ftc.gov/bc/hsr/802_4tipsheet.shtm)

DM  
11/15/11