

802.35

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, March 14, 2012 2:52 PM
To: Verne, B. Michael
Subject: Proposed ESOP Transaction

Mike,

The purpose of my telephone call to you today was to confirm that the following proposed transaction involving an ESOP would be exempt from reporting under § 802.35 of the HSR Rules.

The proposed steps are as follows:

1. A new corporation will be formed ("Holdco"), but initially will issue no securities.
2. Holdco acquires 100% of the voting securities of an existing operating corporation ("Opco").
3. An ESOP is formed meeting the qualifications of Section 401 of the Internal Revenue Code; Holdco's Board of Directors adopts the ESOP; Holdco has the authority to appoint the ESOP's trustee; and the employees of Opco become the beneficiaries of the ESOP.
4. The ESOP acquires 100% of the newly-issued voting securities of Holdco.

I believe the acquisition of Holdco securities by the ESOP is exempt from reporting pursuant to Section 802.35, even though the beneficiaries of the ESOP are the employees of Opco, Holdco's wholly-owned subsidiary. I would appreciate it if you could advise whether you agree with my conclusion.

Thank you and regards.

[REDACTED]

[REDACTED]

[REDACTED]

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I assume that Holdco has no other holdings other than Opco. If that is the case, the transaction would be exempt under § 802.35

BW
3/15/12