

801.50

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, June 05, 2012 1:13 PM
To: Verne, B. Michael
Subject: 801.50

Mike,

I am writing to ask if you could confirm that our conclusion is correct as to the reporting obligations of the parties in the joint venture formation described below:

Transaction. Pursuant to a definitive agreement, (i) Company A will sell some of its assets to Company B for \$100 million, and (ii) Company A and Company B will contribute assets (including the assets Company B purchased from Company A) to a newly formed limited liability company ("Newco"). As result of the transaction, Company A will own 33.3% of Newco and Company B will own 66.7% of Newco. The sale of assets by Company A to Company B is an integral part of the formation of Newco and both the sale and contribution components of the transaction are conditioned on one another.

Relevant Rules. 16 C.F.R. 801.50(a) provides that "[i]n the formation of an unincorporated entity ... even though the persons contributing to the formation of the unincorporated entity and the unincorporated entity itself may, in the formation transaction, be both acquiring and acquired persons within the meaning of §801.2, the contributors shall be deemed acquiring persons only and the unincorporated entity shall be deemed the acquired person only." 16 C.F.R. 801.50(b) provides that in the formation of an unincorporated entity, a person is subject to the notification requirements of the Act only if it acquires "control" of the newly formed entity and the jurisdictional criteria of the Act are met.

"Control" of an unincorporated entity is defined in 16 C.F.R. 801.1(b)(1)(ii) as "having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity."

16 C.F.R. 802.41 provides that whenever a person is subject to the requirements of the Act under 16 C.F.R. 801.50, "the new entity need not file the notification required by the Act."

Reporting Obligations.

1. Company B will be subject to the requirements of the Act in connection with the formation of Newco since it will be acquiring control of Newco and the jurisdictional thresholds of the Act will be satisfied. In that transaction, Newco, as acquired person, will not be required to file.
2. The sale of assets by Company A to Company B will not be separately reportable since it is part of the formation of Newco and in a formation transaction Company A, as a contributor to Newco cannot be an acquired person and Company B is deemed an acquiring person only with respect to its acquisition of interests in Newco. In addition, the sale of assets by Company A to Company B is an intermediate step in the formation transaction and can be disregarded since the final step (B's acquisition of a controlling interest in Newco) is reportable.

Please confirm that our analysis is correct.

Best regards,

[REDACTED]

AGREE -
KWASH CONCURS
[Signature]
6/5/12