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Verne, B. Michael

From: [REDACTED]
Sent: Thursday, January 10, 2013 9:22 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Analysis for a Transaction Involving an MLP and the Transfer of an LLC's Preferred Interests

Mike:

A limited liability company, ("Parent") currently owns certain interests in a publicly-traded master limited partnership ("MLP") and all of the interests in a limited liability company (Sub-A").

With respect to the MLP, Parent (1) indirectly holds the general partner of the MLP, (2) holds various limited partner interests in the MLP, and (3) holds all of the MLP's incentive distribution rights ("IDRs"). The public owns the remaining limited partner interests in the MLP. Because the distribution of profits from the MLP will vary due to the IDRs and the subordination of certain of the limited partner interests held by Parent and because Parent is not entitled to 50% or more of the MLP's book assets on dissolution, we believe that the MLP is not "controlled" for HSR purposes by Parent but is its own UPE. On the other hand, because Parent currently holds all of the interests in Sub-A, Parent does control Sub-A.

Parent, Sub-A, and the MLP are considering a transaction involving several steps. Sub-A currently has one class of membership interest outstanding, but as a first step Parent will amend and restate Sub-A's limited liability company agreement to create two classes of membership interests: Sub-A Common Units and Sub-A Preferred Units. Sub-A will issue all of the Common Units and a portion of the Preferred Units to Parent. We believe that this step is exempt under the intraperson transactions exemption (802.30).

In the next step, Parent will contribute to the MLP the Sub-A Preferred Units it just received from Sub-A in exchange for additional MLP limited partner interests. The additional MLP interests acquired by the Parent in this step (combined with the interests in the MLP already held by the Parent), will not give the Parent "control" of the MLP under the HSR rules. Therefore this part of the transaction would not trigger an HSR filing obligation. We also believe that the MLP's acquisition of the Sub-A Preferred Units does not trigger an HSR filing obligation as explained below.

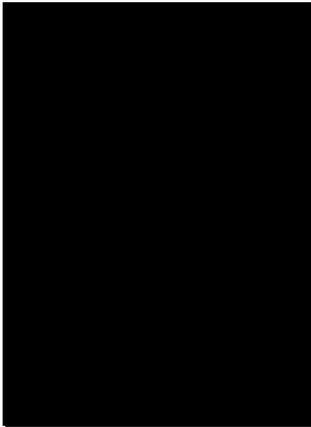
In the final step the MLP will purchase the remaining Sub-A Preferred Units directly from Sub-A in exchange for cash. Assume for purposes of this analysis that the value of the Sub-A Preferred Units held by the MLP is in excess of \$68.2 million. Following these transaction steps, the Parent will own all of the outstanding Common Units (comprising 80% of the total equity of Sub-A), and the MLP will own all of the outstanding Preferred Units (comprising 20% of the total equity of Sub-A).

The Sub-A Preferred Units entitle the holder to preferential distribution rights of profits from Sub-A of \$3.75 million each quarter plus any preferred distribution arrearages from prior quarters for a period of approximately five years. After approximately five years the Sub-A Preferred Units will be

converted to Sub-A Common Units if all of the preferred distributions have been made and the Sub-A Preferred Units would have received, on an as converted basis, \$5 million in distributions on average in the previous two calendar quarters. Any Sub-A profits in excess of \$3.75 million each quarter will be distributed to the holder of the Common Units (in this case the Parent). Because the distribution of Sub-A's profits will vary from quarter to quarter, we believe that the HSR profits test would not be used for determining control of Sub-A, but instead we would look to the assets on dissolution for determining control of Sub-A after the transaction.

A liquidation of Sub-A would result in Parent receiving 80% of the distribution proceeds and the MLP receiving 20% of the distribution proceeds. (The Preferred Units held by the MLP are not entitled to any liquidation preference in the event of a dissolution.) For this reason Parent would be deemed to control Sub-A after the transaction is completed. Because control of Sub-A does not change as a result of the acquisition of the MLP of the Sub-A Preferred Units, we believe that no HSR filing is required for this transaction.

Please let me know if you agree with the analysis and conclusions set forth above. Thanks very much for your help.



Agree
1/10/13
Kew concurs

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