

801-2(F)(3)

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, April 10, 2013 1:11 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: CONFIDENTIAL - Question Concerning Control of Non-Profit Non-Stock Corporation
Attachments: DOC920.PDF

CONFIDENTIAL

Mike -

Hello. I hope you are enjoying the heat wave and looking forward to the Spring Meeting.

We are writing to confirm that a proposed affiliation among three non-profit membership corporations would not be subject to HSR filing obligations, consistent with the informal interpretation reflected in the attached correspondence with you.

NP-A is the sole member of NP-B. NP-A, NP-B, and NP-C propose entering into an affiliation that would be structured as follows. NP-A would be merged with and into NP-B with NP-B surviving. Concurrently with the merger, NP-B's articles and by-laws would be amended so that NP-C would become NP-B's sole corporate member. None of NP-A, NP-B, or NP-C has voting securities now or will have voting securities post-transaction.

As a result of the merger, NP-B will change its name to NP-CB. NP-CB's board will have between 18 and 24 members. Two-thirds of these directors will be appointed initially by the members of the existing NP-B board immediately prior to the merger (the "NP-B Designees"). Thereafter, their successors will be appointed by the NP-B Designees on a self-perpetuating basis. One-third of the directors will be appointed by NP-C. Successors to the directors initially appointed by NP-C will be appointed by NP-C. This board structure will remain in place for 20 years.

NP-C will make a capital commitment in excess of \$200 million to be expended over ten years for the enhancement of NP-CB's operations, will assume or guarantee the outstanding debt of NP-CB, and will commit to support its outstanding liabilities. Following the transaction, NP-C will have overall responsibility and authority with respect to the operations of NP-CB, which will be treated as an integrated unit of NP-C's organization. Except with respect to certain enumerated powers, some of which are reserved to NP-CB and others of which will be exercised jointly by NP-C and the board of NP-CB, NP-C will have the power to make business and operational decisions for NP-CB independent of the NP-CB board.

We understand that because NP-C would not have the power to appoint at least 50% of the directors of NP-CB, no HSR filing would be required in connection with the proposed transaction because no acquiring person would acquire control of NP-CB, an existing non-profit membership corporation which has no outstanding voting securities. This conclusion is true even though (i) NP-C will effectively exercise governance and operational control over NP-CB, and will have the power to make decisions and initiate/implement actions involving NP-CB, including its subsidiary entities; (ii) NP-CB will hold itself out as part of NP-C's "family" or integrated system of service providers; (iii) there will be a commingling of certain funds and assets of NP-CB and NP-C; (iv) NP-C will commit to substantial capital expenditures to NP-CB; (v) NP-C will assume or guarantee the outstanding debt of NP-CB and commit to support its outstanding liabilities; (vi) certain decisions that will initially be made by NP-CB's board will have to be approved by NP-C (such as NP-CB's entering into new contracts with service providers); (vii) for a five-year integration period post-closing, certain actions affecting NP-CB will require the approval of the NP-CB board and NP-C acting jointly, including (among other things) approval of operating and capital budgets; approval of the use of certain funds; material changes to certain contracts with third parties; approval of strategic plans; approval of the CEO; approval of material changes to programs and services offered by NP-CB; amendments to the articles or by-laws of NP-CB; and the sale of NP-CB's real estate; (viii) NP-C may have the authority to contract with third parties (including suppliers and customers) on NP-CB's behalf; (ix) after such five-year integration period, certain of the actions enumerated in (viii) above may require approval by NP-C only; and (x) the Board of NP-CB may not be able to unwind the transaction.

Please confirm that you agree with our assessment that the parties do not have any reporting obligations under the HSR Act. Thanks very much for your assistance -- if you need any additional information, please give me a call.

AGREE - BU 4/10/13
KW CONCUR