

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, July 23, 2013 11:12 PM  
**To:** Verne, B. Michael  
**Cc:** Walsh, Kathryn  
**Subject:** Question on HSR Reportability of "Up-C Structure"

Hi, Mike -

Before you leave on vacation, I was hoping to solicit your guidance on the HSR analysis for a reorganization involving a relatively new going-public scenario known as an "Up-C structure." This structure generally provides more favorable tax benefits to the original equity holders than simply incorporating the partnership or LLC in anticipation of the initial public offering (IPO). Below are the steps in connection with our transaction.

- (1) An existing partnership (Partnership) that is its own ultimate parent entity (UPE) currently has several classes of partnership interests. Partnership has formed a new corporate entity (Newco) of which it currently is the sole shareholder, and which will be taken public in an IPO. Partnership's interest in Newco will be cancelled in connection with the merger described below.
- (2) Newco intends to issue Class A voting common stock (Newco Class A shares) pursuant to the IPO and to use the proceeds of such issuance to purchase limited partnership interests (and to become the general partner) of Partnership. Subsequent to the IPO, Newco will be its own UPE. Holders of the Class A shares will own 100% of the economic interests in Newco. Newco also has the right to issue Class B voting common stock (Newco Class B shares), which will not have any economic rights (i.e., no rights to dividends or to distributions upon liquidation or winding up). Holders of Newco Class A and Class B shares will be entitled to one vote per share and will vote as a single class.
- (3) In connection with the IPO, Newco will create a wholly-owned limited liability company (Merger Sub LLC). Merger Sub LLC will merge into Partnership, which, as a result, will recapitalize Partnership with a single class of common units (LP Units). As stated above, Newco will become the General Partner of Partnership and will use the net proceeds from the IPO to purchase newly-issued LP Units from Partnership. The number of LP Units held by Newco at any time will equal the number of outstanding Newco Class A shares.
- (4) As a result of the merger, equity holders in Partnership will receive newly-issued LP Units in exchange for their prior partnership interests plus the same number of newly-issued non-

publicly traded Newco Class B shares, which will have the right to vote for directors of Newco, but will not have any economic rights.

(5) Beginning as early as the IPO date, and from time to time, the LP Unit holders may exchange their LP Units plus their corresponding Newco Class B shares (non-economic non-publicly traded voting stock) for newly-issued Newco Class A shares (publicly traded voting stock) on a one-for-one basis. Thus, the number of shares of Class A voting stock to be received in any exchange will equal the number of LP Units being surrendered. Newco also has the option to make a cash payment if the number of LP Units to be exchanged is below a certain minimum.

(6) Depending on how many LP Unit holders exchange their LP Units and Newco Class B shares as part of the initial transaction, Newco may or may not hold as much as 50% of the LP Units in Partnership. As more LP Unit holders exchange their LP Units and Newco Class B shares for Newco Class A shares, over time, Partnership will become wholly-owned by Newco. These exchanges may take place over the course of a month to several years.

Since, as a result of the transaction, no new assets (other than cash and perhaps the voting stock of certain holding companies that hold only interests in Partnership and cash) are being contributed to Partnership or Newco and no LP Unit holder will increase its percentage holding in either Newco or the recapitalized Partnership relative to its original holding in Partnership, do you agree that none of the LP Unit holders or Newco will have a reporting obligation in connection with the reorganization/merger described above (steps 1-4) regardless of whether Newco holds less than 50% of the partnership interests in Partnership (not reportable) or 50% or greater of the partnership interests in Partnership (exempt pursuant to Rule 802.10(b)) immediately after the reorganization/merger?

Do you agree that no purchasers of Newco voting stock in the IPO would have an HSR reporting obligation since, at the time of the IPO, Newco would not yet hold any interests in Partnership?

Subsequent to the initial reorganization/merger, if LP Unit holders exchange their LP Units and Newco Class B shares for Newco Class A shares, do you agree that these exchanges would be exempt under 7A(c)(10) with respect to the LP Unit holders since, as a result, no LP Unit holder would increase its percentum share of the outstanding voting securities of Newco?

If, as a result of the initial reorganization/merger, Newco did not already hold at least 50% of Partnership, would a subsequent acquisition of LP Units by Newco (resulting from an LP Unit holder's exchange of LP Units and Newco Class B shares for Newco Class A shares) that increased Newco's ownership in Partnership to 50% or greater be reportable under HSR assuming the size-of-person and size-of-transaction tests were met? Assume the value of such

an acquisition would be in excess of \$283.6M. Would Rule 802.10 be deemed to exempt this acquisition?

I am happy to arrange for a conference call if it would be easier to discuss this transaction via telephone.

As always, many thanks for your assistance.

Best regards,

THE ENTIRE TRANSACTION IS  
EXEMPT AS A REORGANIZATION  
UNDER 802.10

Bm  
7/24/13

K.W. CONCURS

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