

801.2

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, December 10, 2013 5:55 PM
To: Verne, B. Michael; Walsh, Kathryn
Cc: [REDACTED]
Subject: Question Regarding the Effective Date of New Rule 801.2

Mike and Kate

I hope the snow has not been treating you too badly.

We have a question regarding the effective date of the new HSR rule announced November 15 addressing exclusive licenses in the pharmaceutical industry. We understand the new rule is effective December 16. We can use guidance on how the PNO is applying the concept of effective date.

In our transaction, the parties are about to execute an exclusive pharmaceutical patent license. Signing is expected before December 16 but as currently contemplated, closing may be delayed until after December 16. There may be commercial reasons to accelerate the closing but a decision has not been made yet. Since the licensor will retain both co-promote and limited manufacturing rights, as defined in the new rule, the transaction would not be reportable under the old rule but could be reportable under the new rule (new Section 801.2) (after confirming relevant size of transaction and size of person tests). Can you please confirm that the old rule is effective for transactions signed, but not closed, on or prior to 11:59 pm EST December 15?

The key is DATE OF CLOSING

BMW

Thanks.

KW CONCURS

12/11/13

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