

802.9

Verne, B. Michael

From: [Redacted]
Sent: Thursday, March 20, 2014 12:56 PM
To: Verne, B. Michael; Walsh, Kathryn
Subject: Availability of 802.9 & minority holdings in competing companies

Mike and Kate:

I would be grateful for your thoughts on the availability of the 802.9 exemption when the acquirer holds minority interests in companies that may compete with the target issuer. I reviewed Interpretation 1304004, which addresses the scenario where the target issuer has minority holdings in companies that compete with the acquirer, but was unable to find any guidance for the reverse scenario.

Our specific questions for the proposed acquisition by Acquirer A of a minority share of Issuer X for investment purposes:

1. Acquirer A has a minority, non-controlling holding of 14% in Issuer Y. Issuer Y may be a competitor of Issuer X. Would the 802.9 exemption still be available to Acquirer A if A were to acquire a <10% share of Issuer X? Acquirer A has no intention of participating in the formulation, determination, or direction of the basic business decisions of Issuer X, or taking any actions listed in the SBP as potentially inconsistent with a passive investment intent.
2. Would it make a difference if Acquirer A's minority holding in Issuer Y is greater (e.g., >40%)?
3. What if Acquirer A holds 14% of Issuer Y, but one of Acquirer A's officers also serves as a director for Issuer Y?
4. Would it make a difference if Acquirer A is a Natural Person who holds 14% of Issuer Y through a subsidiary, and Acquirer A serves as a director of Issuer Y?

Please let me know if you have any questions. As always, thanks for your assistance.

Best regards,



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All four of these are inconsistent with 802.9. We have set a bright line that holding more than 10% of a competitor either by the target (of a competitor of the acquiring person) or the acquiring person (of a competitor of the target) is presumed to be non-passive.

Bruce
3/20/19

kw concurs