

Verne, B. Michael

From: [Redacted]
Sent: Wednesday, April 02, 2014 7:49 AM
To: Verne, B. Michael; Walsh, Kathryn
Subject: 801.21 - Cash Equivalent Question

Hi Mike/Kate,

Hope all is well, I am hopeful that we saw the last of the snow on Sunday for quite a while! This is a 801.21 cash equivalent question.

Over a year ago, the investment advisors to PE Firm A and PE Firm B entered into a strategic alliance agreement. Under the agreement, the firms agreed to collaborate on certain marketing and investment activities, and Firm A agreed to make capital commitments in specific funds organized by Firm B, which will entitle it to receive a minority portion of the carried interest associated with these funds. At that same time, Firm A acquired a minority position in Target LLC, an entity controlled by Firm B. Under Target's limited liability company agreement Firm A has the right to appoint one of the 16 members of Firm B's investment committee.

As a result of the original transaction, Firm A did not control Target LLC so no HSR filing was required.

In the proposed transaction Firm A will acquire additional membership interests in Target LLC, giving it the right to 50% or more of Target's profits or assets upon dissolution. Firm A's right to appoint one member of Firm B's investment committee will not change. Firm A will not be the sole member of Target. Target's sole asset is its right to receive management fee revenues from an affiliate of Firm B. Target is not a party to any of the management agreements generating the revenues.

The question is whether Firm A's acquisition of control of the Target LLC is exempt from the HSR filing requirement because Target's only asset is its right to receive a revenue stream. I have included copies of informal interpretations and an email exchange confirming that a royalty stream is a cash equivalent and not subject to HSR filing requirements. This situation is analogous. Firm A's right to appoint one of 16 members of Firm B's investment committee should not change the HSR reportability result.

As always many thanks for your guidance.

Best regards,

[Redacted signature]

AGREE
BM
4/2/14

KW CONCURS

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