

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, April 27, 2004 11:30 AM
To: Verne, B. Michael
Subject: FW: Investment Advisers

Mike: Set forth below is a message I sent yesterday to Karen Berg. I do not know if she is in, so I am forwarding this message to you. I have also left you a voicemail message. Please give me a call to discuss this matter.

Thanks.

> -----Original Message-----

> From: [REDACTED]
> Sent: Monday, April 26, 2004 4:43 PM
> To: 'kberg@ftc.gov'
> Subject: Investment Advisers

>
> A registered investment adviser with discretionary authority will purchase securities for (i) clients which are separately managed accounts, and (ii) a limited partnership of which an affiliate of the investment adviser is the general partner. These securities will not be purchased "solely for the purpose of investment." I wish to confirm that the securities held by the separately managed accounts will not be aggregated with the securities held by the limited partnership for purposes of determining whether the size of transaction threshold (e.g., over \$50 million of voting securities) has been reached. I believe that with respect to the separately managed accounts, each separately managed account (and not the investment adviser) is the "holder" of the voting securities and that with respect to the limited partnership, the limited partnership (and not the investment adviser or the limited partners) is the "holder" of the voting securities. I note Interpretation 54 of the ABA Antitrust Section's Premerger Notification Practice Manual (3rd. Ed.) which, although related, is not precisely on point. Any clarification you can provide with respect to this set of facts would be appreciated.

> Thank you.

AGREE - THE INVESTMENT ADVISOR DOES NOT HOLD ANY OF THE VLS IN THE SEPARATELY MANAGED ACCOUNTS OR THE PARTNERSHIP. NO AGGREGATION IS REQUIRED AMONG THEM.

B. Michael
4/27/04

> Notice: This message, and any attached file, is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply e-mail and delete all copies of the original message. Thank you.