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Verne, B. Michael

From: [redacted]
Sent: Monday, March 07, 2005 3:15 PM
To: Verne, B. Michael
Subject: HSR Query

[redacted]

Mike, two short questions based on the following facts. A US company (which happens to be a US limited partnership) ("Seller") is selling one of its portfolio companies (Seller is an investment fund) to another US company ("Buyer") in a 100% share deal. Buyer's worldwide sales/assets are in excess of $10.7 million but below $106.2 million. As Seller is a limited partnership and is not taxed, it does not have a financial showing last year's revenues of its portfolio companies. That is kept at the portfolio company level and the Seller is merely a flow through entity. If you add the worldwide sales of the three portfolio companies of Seller in the last year, they are about $120 million.

The Seller is in the process of liquidating its investments in the three portfolio companies. The first of the three dispositions is not a reportable transaction because the size of the transaction is below $53.1 million. My question is whether I deduct the sales of this sold entity when determining the size of person test for the second disposition? The size of transaction of the second disposition will be above $53.1 million. However, if I deduct the worldwide sales in the last year of the first portfolio company from the UPE's worldwide sales (because it now no longer owns the first company), I am below the $100 million threshold of the size of person test.

My second question concerns calculation of the size of transaction amount. Assume the transaction price is $55 million, but with a post -closing purchase price adjustment clause which is tied into sales revenues up to the closing. The Seller informs me that sales have been terribly slow, and the post-closing adjustment will probably bring the purchase price below $50 million. Do I take into account the post-closing adjustment when determining whether the $53.1 million threshold for the size of transaction is exceeded?

As always, thanks for your help. If you need more details, just let me know.

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YES. IF AN ENTITY HAS BEEN DIVESTED DO NOT INCLUDE SALES. IF THE POST-CLOSING ADJUSTMENT CAN BE REASONABLY ESTIMATED TAKE IT INTO ACCOUNT FOR ACQUISITION PRICE. IF NOT, USE FMV.

B Michael
3/8/05