

802.35

Verne, B. Michael

From: [REDACTED]
Sent: Friday, March 18, 2005 5:16 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: ESOP HSR Query

Mike,

Thank you again for your help yesterday and for your putting up with my chicken scratches (handwriting).

I am separately writing to confirm the advice you gave me relating to the potential Rule 802.35 transaction. I am working on this one with Andy Ritten copied above. Andy and I would appreciate a confirming email from you for our respective files.

Facts

Pursuant to a stock redemption agreement, XYZ Corp will acquire certain of its own shares from various shareholders. The employee trust acquisition of XYZ Corp shares will occur immediately thereafter by which the employee trust will acquire 100% of the outstanding voting securities of XYZ Corp. The employee trust acquisition of XYZ Corp shares satisfies the requirements of the Rule 802.35 exemption.

FTC PNO Advice

Assuming 803.20 (ex. 4) is not available b/c XYZ Corp is controlled by ABC Corp by reason of a contractual right to designate 50% of XYZ Corp's board, then the FTC PNO nevertheless views the redemption as part of or "rolled up into" the exempt employee trust acquisition and therefore XYZ Corp need not file under the HSR Act and Rules in connection with the acquisition of its shares as described above.

Thank you again for your attention.

Have a nice weekend.

AGREE -
B. Michael
2/23/05