

Verne, B. Michael

802.4

From: [REDACTED]
Sent: Thursday, October 06, 2005 2:32 PM
To: Verne, B. Michael
Subject: 16 CFR 802.4

Dear Mike:

Yesterday we discussed a hypothetical in which an acquiring person is acquiring "control" of an LLC ("Acquired Entity").

The Acquired Entity directly owns minority noncorporate interests in two LLCs. You mentioned that under Rule 802.4, the value of these minority interests would be excluded from the calculation of the "size of transaction."

Assume, however, that one of the LLCs is controlled by the ultimate parent of the acquiring person while the other LLC is not. That is, one of the LLCs in which the Acquired Entity directly holds a minority interest is indirectly controlled by the ultimate parent entity of the acquiring person through a different chain of ownership not involving the Acquired Entity.

Would the two LLCs be treated differently under Rule 802.4? I ask because it appears there would be no exemption for the UPE in the event it were to have acquired that LLC directly

Based on a literal reading of 802.4(a), my conclusion is that the two LLCs would be treated the same under 802.4 and both would be excluded from the valuation calculation since the Acquired Entity holds only a minority interest in each of the LLCs. My conclusion is based on the Rule speaking of value of non-exempt assets "the...unincorporated entity and all entities it controls...." (Emph.added.) That is, the rule seems to look at assets under the direct control of the acquired entity rather than under indirect control of the UPE.

Do you agree? Many thanks for your great assistance in understanding these new rules.

[REDACTED]

AGREE -
Burchell
10/6/05

[REDACTED]

[REDACTED]