

Verne, B. Michael

802.30

**From:** [REDACTED]  
**Sent:** Friday, November 18, 2005 12:30 PM  
**To:** Verne, B. Michael  
**Subject:** Confirmation re Indirect Acquisition of Unincorporated Entity



Dear Mike:

I had a chat with Karen Berg when you were out on Wednesday and she suggested I take up the following with you.

Attached please find a structure chart that reflects the following transaction. I am seeking confirmation that an indirect acquisition of "control" over the lowest tier unincorporated entity will not make an otherwise exempt transaction reportable.

In the transaction, the UPE of Acquiror is acquiring a 51% interest in the Investment Partnership from the Acquired Person. The purchase price for these interests is \$10M. My understanding is that one would determine the purchase price of this transaction under 801.10(d) by aggregating the acquisition price of the purchased interests and the fair market value of the interests in the Investment Partnership already owned by the Acquiring Person. I further understand that, pursuant to 802.4, one would exclude any value associated with the minority interests held by the Investment Partnership in the two LLCs shown on the diagram.

Nevertheless, we noted in this transaction that the acquisition of the partnership interest in the Investment Partnership would increase UPE of Acquiror's indirect interests in Project Company LLC from approximately 41% to greater than 50%. The value of greater than 50% of Project Company LLC is well over the size of transaction threshold. We wish to confirm that this fact does not change the above exemption analysis, i.e., that there is no reportable "secondary acquisition" in this transaction.

We believe this is the case based on the language of 801.10(d) which focuses solely on the interests in the unincorporated entity that is being directly acquired. Our understanding is that the effect of the transaction with respect to Project Company LLC is simply to make UPE of Acquiror the UPE of Project Company LLC with respect to future transactions involving that unincorporated entity.

I would like to confirm this with you and to get your views on the proper way to articulate why the indirect change of control in Project Company LLC is not reportable. I will call you today to see if you are available.

EXEMPT UNDER  
802.30  
B. Michael  
11/18/05  
N. OVUKA CONCENS

Before: UPE of Acquiror indirectly holds 41% of Project Co. LLC  
 After: UPE of Acquiror indirectly holds 52% of Project Co. LLC

