

LAW OFFICES

801.1(c)  
802.9

January 11, 2006

VIA E-MAIL—MVERNE@FTC.GOV

Mr. Michael B. Verne  
Premerger Notification Office  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**Re: HSR Compliance Issues**

Dear Mike:

This is to confirm our conversations on January 3 and January 5, 2006, regarding the application of certain of the Hart-Scott-Rodino rules in determining whether a filing is required in connection with the acquisition of voting securities. The issues we discussed were as follows:

(1) You confirmed the staff's interpretation that a settlor's retained annuity payment under a grantor retained annuity trust ("GRAT") does not constitute a "reversionary interest" for purposes of Rule 801.1(c)(3), and that the settlor would not be deemed to "hold" the assets of the GRAT by reason of the retained annuity payment.

(2) Based on the following facts, you confirmed that the below-described partnership would be considered its own ultimate parent entity for HSR purposes:

(a) The partnership has two classes of partners, "preferred" and "common."

(b) The preferred partners are entitled to an 8% non-cumulative preferred return on their capital accounts prior to distributions to the common partners. A husband and wife own in excess of 50% of the preferred partnership interests.

(c) The common partners are entitled to all of the distributions of the partnership in excess of the preferred return amounts. No common partner is entitled to 50% or more of such distributions.

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(d) Currently, all partnership profits have been applied to pay the annual preferred returns.

(e) No partner is entitled to 50% or more of the assets on liquidation.

(3) In a contemplated merger, the partnership will acquire less than 10% of the voting securities of an issuer in a transaction that meets the size of person and size of transaction tests. It is anticipated that the general partner of the partnership (in fact, but not solely as a result of being the general partner of the partnership) will have the right to designate a nominee to the board of directors of the issuer. You advised that if the general partner has such right, then the voting securities will not be considered as being acquired "solely for the purpose of investment," and the exemption under Rule 802.9 will not be available.

Please confirm your agreement with my understandings set forth above. As always, thank you for your assistance on these issues.

Sincerely,

[REDACTED]

AGREE WITH BOTH.  
B Michael  
1/11/06

[REDACTED]