

Verne, B. Michael

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From: [REDACTED]
Sent: Friday, February 17, 2006 5:08 PM
To: Verne, B. Michael
Subject: leveraged lease structure

Hi Mike,

Facts

I have a question about a complex transaction that involves a leveraged lease structure that was set up a number of years ago. A trust (the "Trust") was created to purchase and hold title to a facility (the "Facility") in the Trust for the benefit of an institutional investor (the "Beneficiary"). The Trust issues units that entitle the Beneficiary to economic interest in the Trust. The Facility is leased by the Trust (lessor) to a lessee limited liability company ("Lessee") with two members (the "Members"). The Lessee maintains and operates the Facility, and makes lease payments to the Trust for the Facility.

Acquisitions

I believe that Acquisition A and Acquisition B will happen at the same time.

Acquisition A: In Acquisition A, our client (buyer) proposes to acquire 100% of the beneficial interests (the "Beneficial Interests") in the Trust from the Beneficiary. My understanding is that previously this type of an acquisition would not have been subject to the HSR Act (regardless of the size of transaction and size of person) as the sale of the beneficial interests is in substance only the transfer of an income stream, which is neither a voting security nor an asset under the HSR Act. However, at this time, I believe that the acquisition of the Beneficial Interests would be considered the acquisition of non-corporate interests under Section 801.1(f)(1)(ii). In Acquisition A, the acquisition price is below the size of transaction threshold and accordingly Acquisition A is not a reportable transaction. Can you confirm that the acquisition of interests in a trust is valued the same as an acquisition of non-publicly traded voting securities and accordingly we do not need to include any debt that is being assumed by the buyer in the size of transaction for Acquisition A.

Acquisition B: In Acquisition B, our same client (buyer) proposes to acquire 100% of the membership interests ("Membership Interests") in the Lessee. The acquisition price for 100% of the Membership Interests is below the size of transaction threshold and accordingly Acquisition B is not reportable transaction under the HSR Act. I understand that the acquisition of membership interests is valued the same as an acquisition of non-publicly traded voting securities and accordingly we do not need to include any debt that is being assumed by the buyer in the size of transaction for Acquisition B.

I believe that Acquisition A and Acquisition B would be treated as separate acquisitions but I want to confirm that the acquisition price for the Beneficial Interests does not get aggregated with acquisition price for the Membership Interests. The Beneficiary and the Members are separate unrelated parties. My understanding is that there are no reportable events because the size of transaction threshold is not met in Acquisition A, nor is the size of transaction threshold met in Acquisition B.

Transaction Expenses

Finally, can you also confirm my understanding that transaction expenses of target/seller that are

being paid by buyer do not need to be included in the size of transaction in an acquisition of non-corporate interests.

Thank you for your help. Please let me know if I can provide any additional information.

Have a nice weekend,

[Redacted]

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Agree
B
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