

801.1(a)(2)

Verne, B. Michael

From: [REDACTED]  
Sent: Tuesday, April 11, 2006 9:27 AM  
To: Verne, B. Michael  
Subject: Informal Interpretation follow-up

Mike,

I wanted to follow up on our phone call of last Thursday. As you may recall, I called to discuss a transaction in which the acquiring person "A" is an agency of a foreign government. A controls a U.S. LLC "B," which in turn controls U.S. LLC "C." C will make an acquisition that we assumed would otherwise be Hart-Scott reportable.

My understanding, based on our conversation, is that an acquisition by C would not be reportable because none of A, B, or C would be considered an "entity" under 16 C.F.R. sec. 801.1(a)(2). My understanding is that the carve-out to this exemption contained in the parenthetical in sec. 801.1(a)(2) -- "other than a corporation engaged in commerce" -- is interpreted literally, such that an acquisition by a foreign government agency made through a controlled LLC or partnership is exempt, while an acquisition by a foreign government agency made through a controlled corporation is potentially reportable. In the instant transaction, because the two entities controlled by A are both LLCs, they would not fall into the carve-out to the exemption.

Please let me know if you disagree with the above analysis or if I have misstated any part of our conversation. As always, thank you for your time and assistance. [REDACTED]

[REDACTED]

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AGREE -  
B Michael  
4/11/06