



801.11 (e)



April 18, 2006

BY EMAIL

Mr. Michael Verne
Pre-merger Notification Office
Bureau of Competition, Room 303
U.S. Federal Trade Commission
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Dear Mike,

Following our telephone discussion of Wednesday, April 12, this letter describes our analysis of the Hart-Scott-Rodino ("HSR") Act as it applies to a series of hypothetical events. I wish to confirm that none of the events we discussed would be reportable under the HSR Act.

DESCRIPTION OF ENTITIES

Referring to the entities in the top of the diagram attached with this letter, the hypothetical example relates to a hedge fund directed by a natural person (John Doe) who owns 100% of a managing entity, JD Management, LLC. In turn, JD Management, LLC owns a 33.3% interest in JD Fund, LP, and owns 33.3% of the shares in JD Fund, Corp. (but holds no right to appoint directors). No person is entitled to 50% or more of the profits, or 50% or more of the assets on dissolution, of JD Fund, LP. No person holds 50% or more of the shares, or has the right to appoint 50% or more of the directors, of JD Fund, Corp.

JD Management, LLC also currently owns a 100% interest in a third entity, JD Investments, LLC, a shell company that holds no assets. JD Investments has no balance sheet and will not prepare a balance sheet at any time relevant to this hypothetical. Prior to the acquisitions described below, the two JD funds will each take a 33.3% interest in JD Investments. John Doe controls JD Management, LLC, and through it, makes all investment decisions for the two JD Funds, and JD Investments.

Referring to the entities from the bottom of the attached diagram, the hypothetical example includes BKPT, Inc., a corporation currently in Chapter 11 bankruptcy. Subject to court and various third-party approvals, BKPT will emerge from bankruptcy on June 1. On that date,



various third party creditors holding claims against BKPT will receive shares of new common stock in BKPT in exchange for their claims. In other words, it is expected that the claims will convert into shares of BKPT common stock on June 1. Seller A and Seller B currently hold claims against BKPT, valued at \$60 million each.

TIMELINE OF EVENTS

The sellers have each offered to sell their claims to JD Investments, on two dates: May 1, and May 15. Prior to the May acquisitions, each of the JD Funds (LP and Corp.) will contribute \$40 million in cash to JD Investments, and in turn will obtain one-third interests in JD Investments. JD Management, LLC will contribute \$40 million cash to JD Investments, and will retain the remaining one third interest in JD Investments. On May 1, JD Investments will close a transaction with Seller A and purchase its claims for \$60 million. On May 15, JD Investments will close a transaction with Seller B and purchase its claims for \$60 million. On June 1, assuming that bankruptcy proceedings turn out as planned, the claims against BKPT, Inc. convert into shares of common stock in BKPT.

ANALYSIS – ULTIMATE PARENT ENTITIES

Consistent with our discussion on April 12, we reached the following conclusions:

- John Doe is the ultimate parent entity of JD Management, LLC, because he holds 100% of the LLC interests of JD Management.
- While John Doe manages the investments of the two JD Funds he is not the ultimate parent of these entities, because he (including any entities he controls under the HSR rules) does not hold 50% or more of the partnership interests in JD Fund, LP, and he does not hold 50% or more of the shares in JD Fund Corp., or the right to appoint 50% or more of the directors of JD Fund Corp.
- After the two JD Funds take one-third interests in JD Investments, John Doe will not be the ultimate parent entity of JD Investments because he will not hold 50% or more of the LLC interests in JD Investments.
- Each of the JD Funds (LP and Corp.) and JD Investments, LLC is its own ultimate parent entity, because neither John Doe, nor any other person, controls any one of them under the HSR rules. This is the case even though John Doe, directly or indirectly, has managerial control over those entities.

ANALYSIS – SIZE OF PERSON ANALYSIS FOR JD INVESTMENTS LLC

With respect to the various events described above, consistent with our discussion on April 12, we reached the following conclusions:



- The "claims" against BKPT can be considered equivalent to convertible securities, the acquisition of which is exempt under 16 CFR §802.31.
- Alternatively, the "claims" against BKPT can be considered equivalent to cash, because they represent a right to receive cash from BKPT, the acquisition of which is exempt.
- JD Investments' acquisition of claims is not HSR reportable because the claims are either cash equivalents or convertible securities.

The subsequent conversion of claims into shares of BKPT common stock is a potentially reportable event for JD Investments, but is not reportable in this case, for the following reasons:

- JD Investments will not acquire greater than \$226.8 million in voting securities of BKPT, and therefore its acquisition of BKPT common stock is reportable only if the HSR size of person test is met.
- JD Investments' size of person is determined under 16 CFR §801.11(e) because it is not controlled by any other person, and will not have a regularly prepared balance sheet before or at the time of the conversion.
- JD Investments does not exceed the \$11.3 million size of person threshold under §801.11(e). The only assets that will be in JD Investments prior to the acquisition of shares through the conversion will be the claims against BKPT. The full amount of those claims will be used to acquire the shares of BKPT. The value of the claims, which will be used to acquire BKPT shares, can be deducted from JD Investments total assets because they should be viewed either as cash equivalents or as securities of BKPT, either of which may be subtracted from JD Investments' total assets for determining its size of person under Rule 801.11(e).

Based on our discussion of this scenario last week, I understand that you agreed with our conclusion that no portion of the transactions set forth above would require reporting under the HSR Act. Please let me know as soon as possible if you have any questions regarding this analysis.

Sincerely,

[Redacted Signature]

AGREE. NOTHING
REPORTABLE
B. Michael
4/18/06

Attachment

cc: [Redacted]

[Redacted]

Attachment

NOTE:

- No person holds controlling interests/shares in the JD Funds.
- Both JD Funds and JD Investments are managed by John Doe.

