

801.1(b)
801.1(F)

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, April 26, 2006 10:31 AM
To: Verne, B. Michael
Subject: RE: HSR Compliance

Mike,

I have a further question. For purposes of Section 16 C.F.R. 801.1(f)(1)(ii), is a real estate investment trust in which owners receive transferable certificates of beneficial interests a business trust with noncorporate interests?

YES

Best regards,

[REDACTED]

-----Original Message-----

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]
Sent: Wednesday, April 26, 2006 8:31 AM
To: [REDACTED]
Subject: RE: HSR Compliance

I agree that the present trustee does not control the trust.

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, April 25, 2006 7:11 PM
To: Verne, B. Michael
Subject: HSR Compliance

Mike,

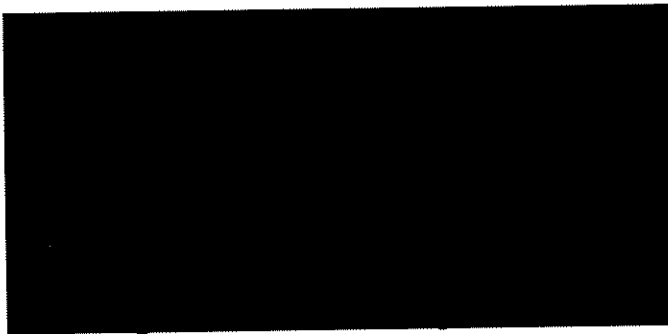
I was wondering if you could provide advice on the following situation. A newly formed trust is the potential ultimate parent entity in an acquisition that may be subject to premerger notification under the HSR Act. The trust presently has one trustee. The Declaration of Trust does not give the trustee the present right to designate any other trustees. The trustee will, however, be required to appoint six additional trustees upon the completion of an initial public offering for interests in the trust (proceeds from the initial public offering will be used to finance the acquisition that may be subject to the HSR Act). But, the identity of six additional trustees is already determined, i.e., the Declaration of Trust identifies them each by name.

My question is whether the current trustee has the present right to designate 50% or more of the trustees of the trust for purposes of 16 C.F.R. Section 801.1(b)(2) such that he controls the trust for HSR purposes and is its ultimate parent entity. Intuitively, it appears

that the trustee does not meet the requirements of 16 C.F.R. Section 801.2(b)(2) both because (a) he does not have the right to designate 50% or more of the trustees at the present time and (b) he will have a fixed obligation under the Declaration of Trust to appoint certain predetermined persons as additional trustees upon the occurrence of a designated event, the initial public offering, and he accordingly does not have the personal discretion to designate trustees of his own choosing.

I would appreciate any guidance that you may be able to provide.

Best regards,



TRUST IN ITS OWN
OPE.
B. [Signature]
4/26/06

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