

Verne, B. Michael

801.10(d)

From: [REDACTED]
Sent: Thursday, October 12, 2006 1:17 PM
To: Verne, B. Michael
Subject: HSR--Treatment of Debt in Acquisitions of LLC Interests

Dear Mike:

Seller is selling 100% of the interests in two wholly-owned LLCs. These two LLCs, in turn, own a 100% interest in a trust ("Trust"). The sole asset of the Trust is a 50% undivided interest in certain commercial real estate properties.

The purchase price for the interests in the two wholly-owned LLCs is \$45 million. The only issue I wish to confirm is the impact on the acquisition price (if any) of the Trust's obligation with respect to \$30 million of outstanding debt.

My conclusion is that the size-of-transaction threshold is not met, relying on 801.10(d). I believe that the indirect assumption of debt would not be counted toward the size of transaction threshold under the various interpretations that indicate that assumption of debt is a part of the consideration in an asset acquisition, but not in an acquisition of voting securities. (E.g., Interpretation 122.)

Out of an abundance of caution due to the relatively recent rules involving unincorporated entities, I simply wanted to confirm that this is correct, given that the interests being acquired are noncorporate interests (as opposed to voting securities).

Many thanks.

AGREE
B. Michael
10/12/06

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