

**Verne, B. Michael**

802.5

**From:** [REDACTED]  
**Sent:** Friday, November 02, 2007 4:27 PM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** Investment Rental Property Assets Exemption

Dear Mr. Verne,

It was a pleasure speaking with you today, November 2, 2007, on behalf of my clients, Company A, Company B and the B Subs (each as described below), and on behalf of [REDACTED] counsel to Company C (as described below). This email serves to further elaborate on and confirm our conversation, during which we agreed that, under the factual scenario described below, no HSR filings are necessary for either Transaction 1 or Transaction 2 described below.

Company A owns and operates a business. Company A owns real property used in the operations of its business. Company B is the sole member of various limited liability companies (the "B Subs"). Company B and the B Subs each own real property that is leased to Company A and used by Company A in its business. The real property owned by Company A, Company B and the B Subs is referred to as the "Real Property."

Transaction 1: Company C, or its subsidiaries within the same UPE (collectively "Company C"), plans to acquire all of the equity interests in Company A and Company B for an aggregate purchase price that would exceed the current size of transaction threshold unless it were reduced by the purchase price to be paid by Company D for the Real Property in Transaction 2.

Transaction 2: Simultaneous with Transaction 1, Company C will cause Company A, Company B and the B Subs to sell the Real Property to Company D. While Company C will briefly indirectly hold the Real Property via its acquisition of Company A and Company B, it will be acquiring the Real Property solely with an investment purpose and will immediately cause the Real Property to be divested to Company D. Company D will then lease the Real Property to Company A (at that point owned by Company C) for use by Company A in its business. Company D will hold the Real Property solely for rental purposes within the meaning of 16 CFR 802.5.

Company A, Company B, and the B Subs are related entities, and we have assumed that all are within the same UPE. Prior to the consummation of Transaction 1, Company A, Company B and the B Subs are unrelated to Company C. Company A, Company B and the B Subs are unrelated to Company D. Company C and Company D are and will be unrelated. Finally, our analysis assumes that the fair market value of the Real Property is equal to the purchase price paid by Company D for the Real Property in Transaction 2.

Our analysis of these facts is that (a) the indirect acquisition of the Real Property by Company C via its acquisition of Company A and Company B in Transaction 1 is exempt pursuant to 16 CFR 802.5, (b) for purposes of the size of transaction analysis, the size of Transaction 1 will be determined by reducing the purchase price to be paid by Company C for Company A and

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Company B in Transaction 1 by the purchase price to be paid by Company D for the Real Property in Transaction 2, which reduction results in Transaction 1 not meeting the size of transaction test and there being no HSR reporting obligation for Transaction 1, and (c) the acquisition of the Real Property by Company D in Transaction 2 is exempt from HSR reporting pursuant to 16 CFR 802.5.

Based on our analysis stated above and our conversation, the parties will be proceeding on the basis that no HSR Act filings are required for either Transaction 1 or Transaction 2. If the foregoing does not accurately reflect our discussions or if you have any questions or require any additional information, please contact me. As always, we appreciate your assistance.

Best Regards,

[Redacted]

[Redacted]

AGREE -  
BM  
11/5/07

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This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify [Redacted] immediately -- by replying to this message or by sending an email to postmaster@[Redacted] -- and destroy all copies of this message and any attachments. Thank you.

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