802.2
801.10
802.4

Verne, B. Michael

From: [redacted]
Sent: Thursday, March 13, 2008 12:01 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: HSR Analysis For 2:30pm (EST) Call with Mike Verne

Dear Mike:

In advance of a teleconference that [redacted] has scheduled with you at 2:30pm (EST) today, [redacted] and I thought it made sense to send you a short note to lay out our analysis and understanding of the applicable HSR rules/regulations surrounding the so-called "warehouse exemption" and a related valuation methodology question. [redacted] represent the interests on the selling side of the transaction, while my firm represents the buying side. Briefly, as follows:

Proposed Transaction

Pursuant to a proposed transaction, my client, the Acquiring Person, intends to purchase 79.3% of the interests of an entity organized as a Maryland Real Estate Investment Trust (the "Company"). My client, the Acquiring Person, already owns 20.7% of the existing interests of the Company, and following this transaction, will own 100% thereof. The businesses and assets to be acquired (the "Target Businesses") consist primarily of owned and leased cold storage warehouses within the United States and the provision of cold storage and related services to the food industry in such warehouses. The Target Businesses also include services incidental to the operation of these warehouses, including: freight handling (the loading and unloading of vehicles bringing freight to and from the warehouses), storage, blast freezing, freight consolidation, packaging and non-asset-based logistics services (e.g. the Company arranges on behalf of its warehouse customers, for a fee, for the distribution of warehoused goods using third-party distribution channels). The acquisition of the owned and leased warehouses, and the assets incidental to the ownership of the real property interests in such warehouses is exempt under the HSR Act's Warehouse Exemption, 16 C.F.R. § 802.2(h). However, the Target Businesses also include businesses the acquisition of which is not exempt under such Warehouse Exemption, including a quarry business, an asset-based distribution services business and a business involving the management of third-party warehouses in which the Company does not have any real property interest.

The acquisition price of the interests in the Company to be acquired in the proposed transaction exceeds $340 million. Additionally, the fair market value of the existing 20.7% interest owned by the Acquiring Person is approximately $86 million based on the value being paid for the 79.3% interest in the proposed transaction. Per Section 801.10(d) of the HSR regulations, for purposes of our analysis of reportability of the proposed transaction under the HSR Act, the value of the non-corporate interests to be held as a result of the proposed acquisition is, therefore, approximately $426 million (i.e. the sum of the acquisition price of the interests to be acquired and the fair market value of the interests in the same entity already owned by the Acquiring Person).

The Acquiring Person has conducted a fair market valuation with respect to the portion of the transaction that is exempt under the HSR Act's Warehouse Exemption and with respect to the portion of the transaction that is potentially reportable. Specifically, the Acquiring Person, for purposes of its fair market valuation, has categorized each business unit within the Target Businesses as either exempt or non-exempt under the Warehouse Exemption. Under the fair market valuation, the value of the non-exempt business units, those that would not consist solely of warehouses and assets incidental to the ownership of warehouses, will not in aggregate exceed $63.1 million, the HSR size-of-transaction threshold.

The Acquiring Person conducted its fair market valuation in the following manner. First, the Acquiring Person treated the fair market value of all of the Target Businesses taken together as equal to the purchase price (i.e. approximately $340 million) because that is the arm's length negotiated transaction price for which the interests in the Company are being transferred. It is worth noting that, although the Company has in excess of $1.0 billion of indebtedness which will remain outstanding following the consummation of the proposed transaction, we understand that the PNO's long-standing position has been that the dollar value of liabilities of the Target Businesses is not aggregated with the purchase price in calculating the size-of-transaction, and therefore the acquisition price for the interests in the Company must not include the amount of this indebtedness. Next, each business unit was valued based on a net present value, NPV, of cash flow expected to be generated by that business unit over a multi-year period. The NPV of each business unit was then divided by total NPV of all the business units to determine the percentage of the total value that each business unit comprised. The percentages were then totaled for the non-exempt components to determine the percentage of total value comprised by the non-exempt business units. The percentage of total value comprised by the non-exempt business units was then multiplied by the purchase price to determine the fair market value of the non-exempt components.

Acquiring Person performed its valuation on a business unit-by-business unit basis rather than on an asset-by-asset basis because it values the businesses based on the cash flows expected to be generated by them, not based on the value of individual assets.

Our Analysis

Our conclusions of this transaction indicate the following:

· The transaction described above is exempt under the HSR Act.

· The fair market valuation methodology described above is an acceptable way to conduct the valuation for HSR Act purposes.

· The acquisition of warehouses and the assets incidental to the ownership of the real property interests in such warehouses described above is exempt from the HSR Act pursuant to 802.2(h), notwithstanding the exception in the Warehouse Exemption (to the effect that a warehouse acquisition is not exempt "when the ...warehouse is to be acquired in an acquisition of a business conducted on the real property"). That exception to the Warehouse Exemption does not apply where, as here, the business conducted on the real property is itself the operation of a warehouse and services incidental to warehousing. The various services offered by the Company's warehouse business are considered incidental to the warehouse business and do not change the fact that the Warehouse Exemption is available for the acquisition of the real property interests in such warehouses and the assets incidental to ownership thereof assets.

· Exempt assets incidental to the ownership of warehouses include: lift trucks, fork lifts, refrigeration equipment, racks, assets for food preparation/packing services and customs related services. We also understand that exempt assets incidental to the ownership of the warehouses include other assets used to offer the various services described in this letter.

· Pursuant to 16 C.F.R. § 802.4, the Warehouse Exemption remains applicable whether the transaction is structured as the acquisition of non-corporate interests (e.g., the acquisition of units of a Maryland Real Estate Investment Trust) or the acquisition of voting securities.

Please let us know if you disagree with any of the conclusions discussed above, or if we have misunderstood any aspect of the relevant HSR rules/regulations. Thank you in advance for your time and attention in this matter, and we look forward to speaking with you later today.

Best Regards,

[redacted]

AGREE -
BM
3/13/08

[redacted]