

801.10

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Thursday, May 15, 2008 12:20 PM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** HSR Analysis for 4 PM ET Call

Dear Mr. Verne:

In advance of the teleconference with you at 4 PM ET, I thought it made sense to send you a short note to lay out our analysis and understanding of the applicable HSR rules/regulations as applied to an anticipated transaction. We represent the interests on the selling side. [REDACTED] represents the interests on the buying side.

Anticipated Transaction

Buyer is to purchase directly and indirectly all of the noncorporate interests of a limited liability company (the "Company"). 58% of the Company's noncorporate interests (which represents a controlling interest in the Company) are to be purchased by a wholly-owned subsidiary of the Buyer ("Buyer Sub 1") from a corporation ("Seller 1") that is owned and controlled by two natural persons. These two natural persons are the expected filers for the selling parties based on their status as the "ultimate parent entities" of the Company.

The balance of the Company's noncorporate interests (42%) is held by an LLC ("Intermediary 1"), and the noncorporate interests of Intermediary 1 are held by another LLC ("Intermediary II"). Over 99% of the noncorporate interests of Intermediary II are held by a second seller ("Seller 2"). Simultaneously with the purchase by Buyer Sub 1 described above, another wholly-owned subsidiary of the Buyer ("Buyer Sub 2") is to purchase Seller 2's noncorporate interests in Intermediary II. At the closing, Intermediary I and Intermediary II will not hold any assets other than their interests in other entities (Intermediary I and the Company, respectively); neither Intermediary I nor Intermediary II actively conduct business.

A chart illustrating the structure of the anticipated transaction is attached for your convenience.

Analysis

Given the size of the transaction, we expect for a filing to be made with respect to the acquisition by Buyer Sub 1 of the noncorporate interests of the Company held by Seller 1.

We think, however, that the acquisition of the noncorporate interests of Intermediary II from Seller 2 by Buyer Sub 2 should not require an additional filing by Buyer or by Seller 2. It is our understanding that the PNO takes the position that the value of noncontrolling interests in other entities should not be included when valuing nonexempt assets for purposes of Section 802.4. Accordingly, because the only assets held by Intermediary II is its interests in a subsidiary with few or no assets (Intermediary I), and the only assets held by Intermediary II is a noncontrolling interest in another entity (the Company), we think the acquisition by Buyer Sub 2 of the noncorporate interests of Intermediary 2 is exempt from filing. Section 801.4 would not apply to the indirect acquisition of a noncontrolling interest of the Company by Buyer Sub 2.

Please let us know if you disagree with the analysis and the conclusions 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.

[REDACTED]

5/15/2008

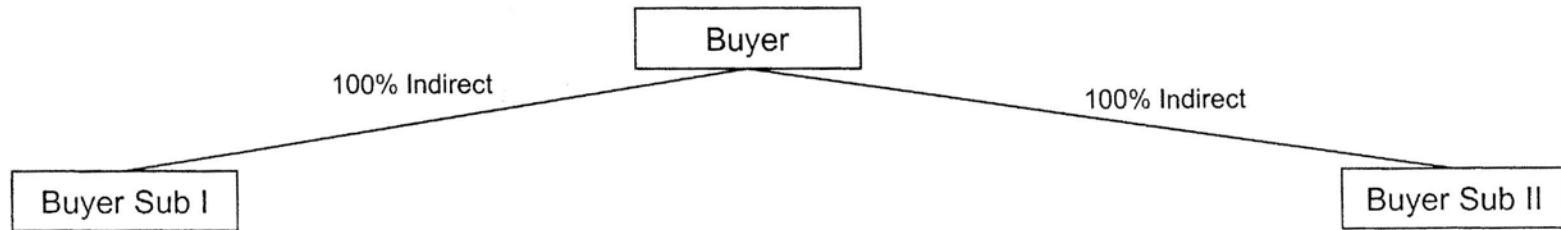
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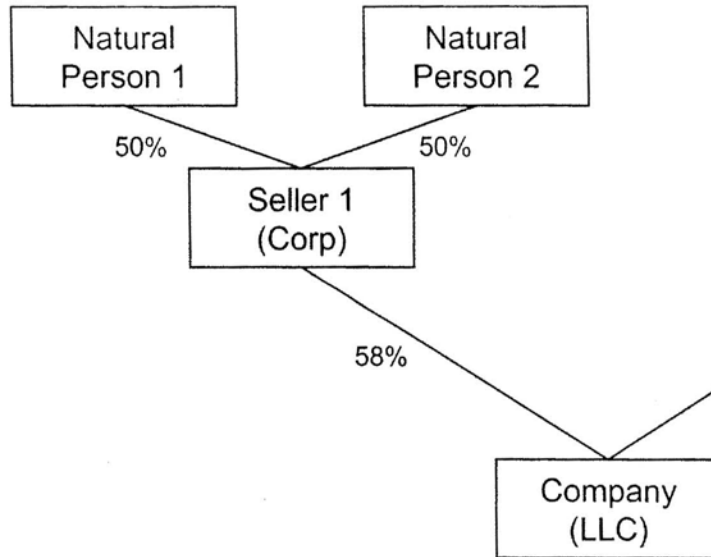
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# Prior to Transaction

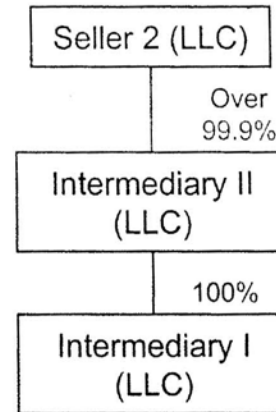


Buyer Sub I intends to purchase more than 50% of the interests in the Company from Seller 1

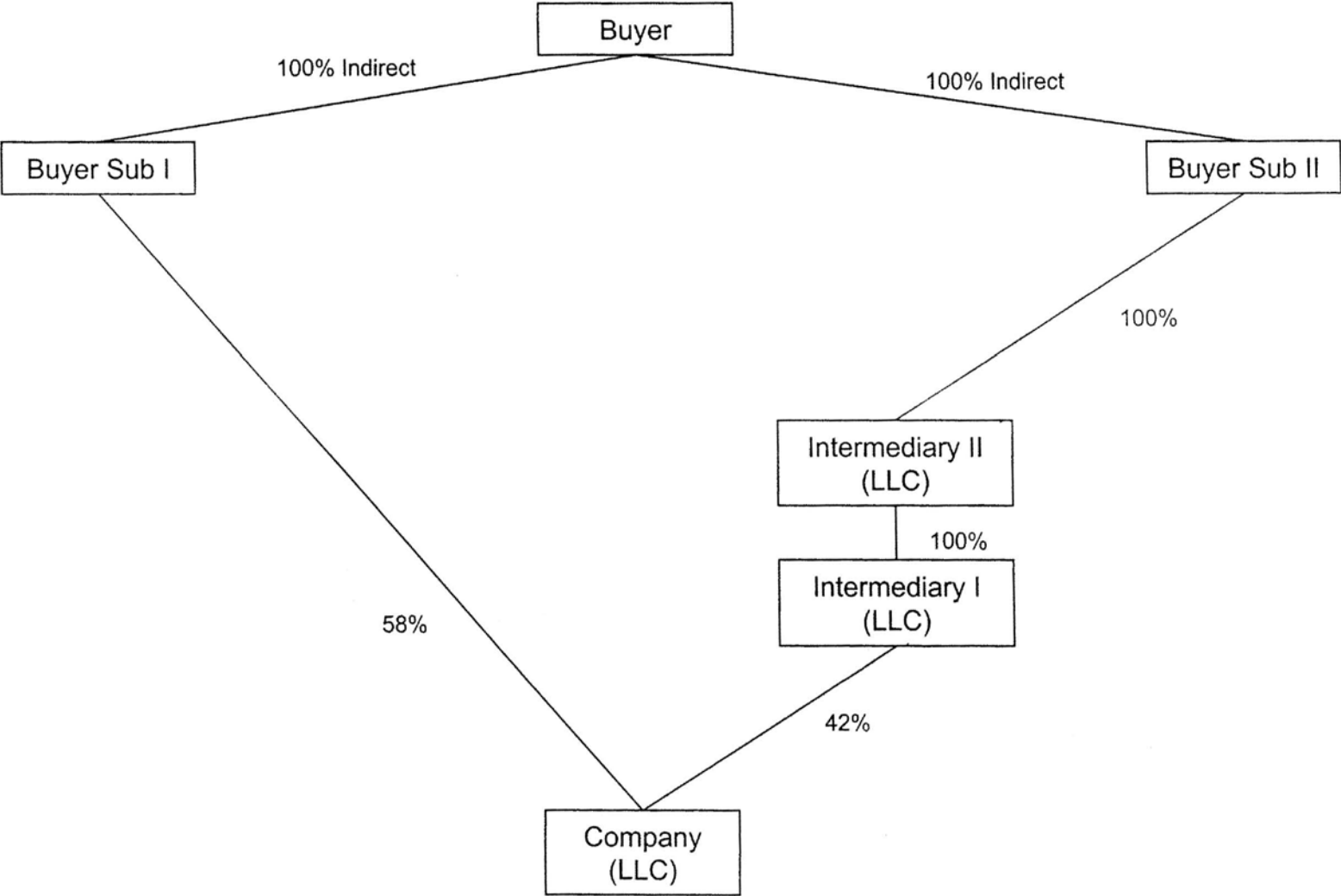


Buyer Sub II intends to purchase more than 99% of the interests in Intermediary II from Seller 2.

Buyer Sub II intends to purchase less than 1% of the interests in Intermediary II from another Seller for \$350.



# Following Transaction



I agree that only one filing is required - Buyer as acquiring person and Natural Persons 1 & 2 as acquired persons. I also agree that the direct acquisition of 100% of Intermediary II is exempt under Section 802.4. However, if there are contracts in place that contemplate acquiring all of the interests in Company, we would require aggregation of the directly acquired interests (58%) and the indirectly acquired interests (42%) to determine the size-of-transaction. So the filing would be to acquire 100% of the membership interests of Company.

B  
5/5/08