

801-1 (c)

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**From:** [REDACTED]  
**Sent:** Monday, June 09, 2008 10:23 AM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** RE: Scheduling a Call

Mike,

We will try to call you at 11:30 am EDT. If that time does not work for you, let us know, and we can try to arrange a different time. Thanks,

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Friday, June 06, 2008 4:29 PM  
**To:** mverne@ftc.gov  
**Cc:** [REDACTED]  
**Subject:** RE: Scheduling a Call

Mike,


As discussed on Wednesday, our client intends to acquire the rights held by two trusts in a power generation facility that is currently held in a standard sale/leaseback structure. The two trusts are common law, grantor trusts formed under New York law. They are not "business trusts" as certain entities are legally formed under state law (e.g., Massachusetts business trusts). As I understand it, the trusts were formed in 1992 to facilitate a sale/leaseback financing arrangement. As part of the financing transaction, the owner/operator transferred title to the facility to three trusts, which each took an undivided interest in the facility and received a right to the lease payments from the former owner/operator. Thus, the corpus of each trust is an undivided interest in a power generation facility, and each trust is entitled to lease payments from the lessee/operator of the facility. The beneficial interests of each trust entitle the holder to receive distributions from the trust and to have certain other rights as defined in the trust agreement. Please confirm your view of whether the acquisition of the beneficial interests in the New York trusts is potentially reportable under the HSR Act.

A second issue is whether our client's acquisition of the trust interests and/or the underlying assets of the trust would be exempt as an acquisition in the ordinary course. It is our understanding that interests in grantor trusts of this type are commonly transferred between and among investors. In a prior transaction, the PNO apparently stated that the ordinary course exemption would extend to transactions involving the sale of assets subject to financing leases as well as the sale of beneficial interests in entities holding interests in such assets if the following conditions are met:

- (1) the assets are subject to a bona fide financial lease;



First, we agree that these are not business trusts so the acquisition of beneficial interests of the trust are not treated as acquisitions of non-corporate interests. In a sale/leaseback arrangement, we take the position that beneficial ownership of the underlying assets remains with the original owner of the assets despite title passing to the lessor. So, in your transaction, where your client is stepping into the lessor's shoes in the sale/leaseback, there is still no change of beneficial ownership of the facility itself. So your client is really just acquiring a revenue stream. We think there is nothing reportable here.

  
6/9/08

K. WALSH CONCURS.