

Verne, B. Michael

802.3

From: [REDACTED]
Sent: Wednesday, June 18, 2008 11:29 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Follow-Up Question

Mike:

Thank you for your response to our voicemail yesterday.

I thought it would be helpful to outline the issue that we are seeking guidance on in connection with the exemption in Section 802.3 of the Rules. This involves a transaction that [REDACTED] representing the Seller, raised an earlier question with you about by e-mail on June 5. At that time, it was not clear that the transaction involved a long-term coal lease as described below.

My client is entering into a long-term lease with a corporation (the "Mine Owner") that will give my client the rights to all of the coal reserves owned by the Mine Owner essentially for the viable life of the reserves. In addition, my client is acquiring (A) 80% of the voting stock of an affiliate of the Mine Owner (the "Mine Operator") that owns coal mining exploration and production equipment and surface land surrounding the Mine Owner's coal mine, and (B) railroad assets (primarily undeveloped real property and easements permitting development of a railroad) from the Mine Owner that are intended to provide rail access to the coal mine (the "Rail Assets"). Currently, the Mine Operator and the Mine Owner are each owned by the same ultimate parent entity.

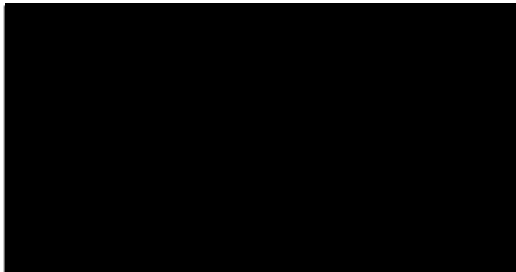
The coal lease will be for the useful life of the coal reserves and we therefore understand that it should be treated as a transfer of beneficial ownership of the coal reserves (see, for example, Int. 28 in the Premerger Notification Practice Manual, 3rd ed.). Based on Section 802.3 and 802.4 of the Rules, we understand that if the value of the coal reserves together with the value of the associated exploration or production assets does not exceed \$200 million, the acquisition of those assets will be exempt.

Our question relates to whether the Rail Assets constitute associated exploration or production assets or whether they must be treated as non-exempt assets along with any other non-exempt assets that may be held by the Mine Operator. The exclusion from Section 802.3(c) for pipeline and pipeline systems for the transportation of oil and gas would seem to suggest by analogy that the Rail Assets should not be considered exploration or production assets.

Please feel free to contact me if additional information is required.

Thanks in advance for your help.

AGREE -
 Bm
 6/19/08



6/18/2008