

Verne, B. Michael

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**From:** [REDACTED]  
**Sent:** Monday, July 28, 2008 3:21 PM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** FW: question regarding management agreement

Hi, Mike:

We have a question regarding whether the execution of a management agreement could be deemed an acquisition of assets under certain circumstances, possibly triggering reporting under the Act.

A, a private equity fund, is entering into an agreement with Seller to purchase all of the issued and outstanding voting securities of B, a company owned by Seller (the "Transaction"); at the same closing A will enter into an option agreement with Seller which provides that either A or Seller upon the occurrence of certain conditions precedent can require the other to enter into a Management Agreement with the other with regard to C, another company owned by the Seller, within a year's time (the "Option Agreement"). The value of the Transaction is below the HSR reporting threshold and the Option Agreement does not give rise to a reporting at present because there is no acquisition and at most such option represents a convertible voting security.

However, A is concerned that if it decides to exercise - or is caused to exercise - the option granted under the Option Agreement, the execution of the Management Agreement (the "Agreement") may be viewed as a transfer of assets from Seller and subject A and Seller to HSR reporting (prior to exercise) since the combined value of the Transaction and the Agreement (for which additional consideration will be paid by A) is expected to exceed the HSR threshold.

As noted, C is a corporate entity in the medical space owned solely by Seller, a doctor; A is prevented from owning C due to various "corporate practice of medicine" doctrines, which prohibit ownership by non-doctors. Under the Agreement, A will assume all of the administrative duties of C and have the sole and absolute authority and responsibility to manage and operate C, except providing the actual medical services; A will also be entitled to all profits of C but will not bear any risk of loss if C performs poorly. Record ownership of C's voting stock, all medically-related decision-making and risk of loss will remain with Seller.

We think under these circumstances, that the entry into the Agreement would not be deemed to be a transfer of assets, which, when aggregated with the earlier Transaction would require reporting. Do you agree?

Thanks  
[REDACTED]

Agree  
[Signature]  
7/29/08