

801.1(b)

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, December 02, 2008 5:35 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Confirmation of our telephone discussion regarding control of an LLC

Mike:

As we discussed this morning, we are reviewing a transaction with a view to determining whether or not an HSR filing is required in connection with the acquisition by Buyer from Seller of interests designated as "Class A Interests" in an LLC, for cash consideration of \$50 million (the "Closing Consideration").

Prior to, and in contemplation of the purchase of the Class A Interests, Seller will form the LLC as a wholly-owned subsidiary and contribute to the LLC certain assets constituting the business of Seller. The equity of the LLC will be comprised of Class A Interests and Class B Interests. The fair market value of the assets is approximately \$170 million. Following the purchase of all of the the Class A Interests by Buyer, the Sellers will retain all of the Class B Interests, which interests have a liquidation value of \$120 million.

Distributions made by the LLC will be made pursuant to the following terms:

1. First, to Buyer until Buyer has received an amount equal to the \$50 million Closing Consideration plus a 25% compounded internal rate of return.
2. Second, to Seller until Seller has received an amount equal to \$120 million plus a 4% return thereon.
3. Thereafter, Buyer shall receive 80% and Seller 20% of distributions.

You indicated that under these terms the rights to profits are not fixed at the time of closing and therefore would not be relevant to determining whether or not Buyer would control the LLC at closing. Please confirm.

The rights to assets upon the dissolution of the LLC are as follows:

1. Buyer's Class A Interests give Buyer a liquidation preference under which Buyer will be entitled to the first \$50 million obtained upon a sale of the LLC's assets in a liquidation, plus a 25% compounded internal rate of return.
2. Thereafter, Seller will be entitled to \$120 million of the proceeds from the sale of assets in a liquidation, plus a 4% return thereon.
3. Thereafter, Buyer and Seller would receive 80% and 20% of the proceeds of any liquidation.

If the fair market value of the LLC's assets at closing equals approximately \$170 million, and Buyer would not be entitled to receive 50% or more of that amount, am I correct in concluding that Buyer will not control the LLC and need not make an HSR filing?

Thank you very much for your time.

Kind regards,

[REDACTED]

CONNECT
 BW
 12/3/08

[REDACTED]