

802.9  
801.2**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Monday, December 22, 2008 10:39 AM  
**To:** Verne, B. Michael  
**Subject:** RE: HSR question

Please note that, with respect to the below, my analysis is as follows:

1. Formation of Newco ("N"): A and B must file but N need not file per Section 802.41 (ex. 1).
2. Acquisition of assets from C: Both N and C must file. The intraperson exemption (Section 802.30) does not apply since B does not control N (only 49% ownership) and, therefore, the fact that B and C have the same controlling equityholder is rendered irrelevant in the analysis.

Please let me know if you agree.

Thanks again

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**From:** [REDACTED]  
**Sent:** Friday, December 19, 2008 3:38 PM  
**To:** 'Verne, B. Michael'  
**Subject:** RE: HSR question

As a follow up, please note that A will own 51% of Newco and B will own 49%.

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**From:** [REDACTED]  
**Sent:** Friday, December 19, 2008 3:07 PM  
**To:** 'Verne, B. Michael'  
**Subject:** HSR question

Mr. Verne:

Sorry to bother you again but I have another question.

The question is whether two HSR filings are required or just one.

Here's the scenario. Parties A and B will each contribute approx. \$100mm to form Newco, and Newco will then spend \$200mm+ to acquire assets from C. Note that B and C are "sister" entities, each publicly traded, but w/ the same controlling equityholder. The two transactions would close substantially concurrently.

Again, thank you in advance.

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12/22/2008

1. The formation of Newco is not reportable because all that is being contributed is cash. A and B's acquisition of Newco voting securities is exempt under § 802.4.

2. Newco's subsequent acquisition of assets from C is reportable. A is the acquiring person (by holding 51% of Newco and the controlling equityholder (I'm assuming this is control for HSR purposes) of C is the acquired person.

B  
12/22/08