

801.10

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, June 11, 2009 10:36 AM
To: Verne, B. Michael
Subject: HSR Interpretation

June 11, 2009

B. Michael Verne
Premerger Notification Office
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Mike:

Thank you for taking the time to speak with me this past Tuesday. I am writing to confirm the advice you provided. The facts and the discussion are set forth below.

Background

Company A plans to acquire assets from Company B out of bankruptcy if it is the winning bidder in a bankruptcy auction process. In addition to acquiring assets, Company A would reimburse Company B for certain pre-paid expenses including rent on leases that will be assumed on a going-forward basis.

Company A's bid to acquire the assets from Company B is supported by Company C, which is a creditor of Company B. Company A and Company C have agreed that if Company A is the successful bidder for Company's B assets in the auction that Company C would pay Company A certain amounts in consideration of Company A agreeing to certain modifications to contractual rights with Company C that Company A would acquire from Company B. Company C has also offered to Company B to forgive certain obligations owed by Company B to Company C if Company A is selected as the winning bidder in the auction, although such forgiveness would not change the amount that Company A would pay to Company B nor the amount that Company C would pay to Company A.

Discussion

As discussed, the reimbursement of pre-paid expenses as described above is considered the acquisition of cash equivalents, which are exempt assets under the Hart-Scott-Rodino Antitrust Improvements Act and are not included in determining the size of the transaction.

With respect to Company's C involvement, the forgiveness of certain obligations of Company B by Company C as described above would also not be included for purposes of

determining the size of the transaction.

Thank you again for your consideration and assistance in this matter. If you do not believe this note reflects the facts discussed in our telephone conversation, or if I have misstated the advice you gave, please contact me as soon as possible.

Sincerely,

[Redacted signature]

AGREE
BM
6/11/09

[Redacted signature]

Circular 230 Disclaimer: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter(s) addressed herein.

This message contains confidential information, intended only for the person(s) named above, which may also be privileged. Any use, distribution, copying or disclosure by any other person is strictly prohibited. In such case, you should delete this message and kindly notify the sender via reply e-mail. Please advise immediately if you or your employer does not consent to Internet e-mail for messages of this kind.

[Redacted] practice in the State of [Redacted] is conducted by [Redacted], a limited liability partnership comprised of professional corporations.