801.1(b)
801.10
801.11

Verne, B. Michael

From: [redacted]
Sent: Thursday, June 18, 2009 2:47 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: Informal Interpretation

Dear Mr. Verne:

Thank you very much for speaking with me earlier this morning and again this afternoon. I am writing to confirm the advice you provided during our conversation.

Ultimate Parent Entity Analysis

Fund A, Fund B, Fund C and Fund D (the "Members") have formed LLC X as follows:

Member	*Initial Contribution*	*Percentage Interest (%)*
Fund A	$100.00	33.34%
Fund B	$50.00	16.66%
Fund C	$50.00	16.66%
Fund D	$100.00	33.34%

Fund B and Fund C are under common control. However, Funds B and C are not under common control with Fund A or Fund D. Furthermore, Fund A and Fund D are not under common control with each other. As a result, none of (i) Fund A, (ii) Funds B and C together, and (iii) Fund D hold interests in LLC X entitling it to 50% or more of the profits or assets upon dissolution of LLC X.

QUESTION: Is LLC X its own ultimate parent entity?

Rule 801.1(a)(3) provides that "[t]he term ultimate parent entity means an entity which is not controlled by any other entity." Rule 801.1(b) further provides that "[t]he term control...means:... (ii) In the case of an unincorporated entity, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity".

Per our conversation, you confirmed that, since none of (i) Fund A, (ii) Funds B and C together, and (iii) Fund D of LLC X would have the right to 50 percent or more of the profits or assets upon dissolution and, therefore, none acquired "control" under the HSR Act, LLC X is its own ultimate parent entity.

Please confirm that our analysis as it appears above is correct.

Size-of-Transaction Analysis

LLC X (Acquiring Person) proposes to purchase certain assets and assume certain liabilities of Company Z (Acquired Person) (the "Acquisition").

The aggregate purchase price for the Acquisition is $143,420,000 (the "Purchase Price"), comprised of $105,323,000 of consideration and $38,097,000 of assumed liabilities.

QUESTION: Has the Size-of-Transaction Test been satisfied?

To determine the size of the transaction for the Acquisition, we look to Rule 801.10(b), which states that the value of assets to be acquired shall be the FMV of the assets, or, if determined and greater than the FMV, the acquisition price. Per Rule 801.10(c)(2), the acquisition price shall include the value of all consideration for such assets to be acquired. The Purchase Price is $143,420,000, and, therefore, the size of the transaction test has been met. However, because the size of the transaction is not greater than $200 million (as adjusted, the current threshold is $260.7 million), the size of the person test must be addressed to determine whether the Acquisition is reportable.

Please confirm that our analysis as it appears above is correct.

Size-of-Person Analysis

QUESTION: Has the Size-of-Person Test been satisfied?

To determine the size of persons LLC X and Company Z, we look to Rule 801.11.

Company Z (Acquired Person): As of the date of Company Z's last regularly prepared balance sheet and last annual income statement, it had total assets and annual net sales exceeding the $100 million threshold (as adjusted, the current threshold is $130.1 million).

LLC X (Acquiring Person): LLC X is newly formed and, therefore, does not have a regularly prepared balance sheet pursuant to which its total assets can be determined under Rule 801.11(c)(2). As a result, we must look to Rule 801.11(e)(1) to determine the total assets of LLC X. Rule 801.11(e)(1) states "[a]n acquiring person that does not have the regularly prepared balance sheet described in paragraph [801.11(c)(2)] shall be, for acquisitions of each acquired person (i) [a]ll assets held by the acquiring person at the time of the acquisition, (ii) [l]ess all cash that will be used by the acquiring person as consideration in an acquisition of assets from...that acquired person...and less all cash that will be used for expenses incidental to the acquisition, and less all securities of the acquired person...."

The Members of LLC X will provide a funding commitment of up to $50 million in the form of a term loan to LLC X to satisfy a portion of the Purchase Price. Approximately $35 million will be drawn down from this commitment to pay the Purchase Price for the Acquisition and the remaining $15 million will be available to be drawn down for a period of approximately 6 months if needed for working capital or other permitted corporate purposes. LLC X does not plan to draw down from the remaining $15 million at the time of the acquisition. In addition, LLC X will assume liabilities of approximately $38 million of Company Z to satisfy a portion of the Purchase Price. Finally, the Members of LLC X plan to discharge approximately $70 million in Term A Loans owed by Company Z to the Members to further satisfy the Purchase Price.

Per Rule 801.11(e)(1)(ii), all cash used by the acquiring person as consideration in an acquisition of assets is deducted from the total asset calculation. As a result, the $35 million that will be drawn down from the Members' funding commitment will be excluded from the total asset calculation of LLC X. Per our conversation, you indicated that, so long as the remaining $15 million loan commitment was not drawn down at the time of the acquisition, it would not be included in the total asset calculation of LLC X. In addition, per our conversation, you indicated that the $70 million of Term A Loans of the Members (which will be forgiven as part of the acquisition price and not assigned by the Members to LLC X) would not be included in the total asset calculation of LLC X.

As a result, LLC X and Company Z will not meet the size of the person test because the assets of the acquired person (i.e., Company Z, which has total assets and annual net sales of $100 million or more (as adjusted, the current threshold is $130.3 million)) are not being acquired by a person with total assets or annual net sales of $10 million or more (as adjusted, the current threshold is $13.1 million) (i.e., LLC X, which has total assets of zero) and, therefore, no filing is required. 13.0

Please confirm that our analysis as it appears above is correct.

Thank you again for your consideration and assistance in this matter. If you do not believe this e-mail reflects the facts discussed on our telephone conversation or if I have misstated the advice you gave or if you disagree with my interpretation, please contact me as soon as possible at [redacted]

Best regards,

[redacted]

[redacted]

AGREE -
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6/18/09

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