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Verne, B. Michael

From: [redacted]

Sent: Wednesday, June 24, 2009 2:53 PM

To: Verne, B. Michael

Cc: [redacted]

Subject: Transaction Summary

Mike,

Here is a high-level summary of the transaction structure we want to discuss with you. Company A, a corporation, and Company B, an income fund, are pre-existing public companies, each of which is its own UPE. A transaction is contemplated whereby:

1) through a series of intraperson transactions, Company A will transfer all of its assets and liabilities into a newly formed subsidiary (Newco). However, Company A will retain a liability to Newco.
2) Company A will make an offer for all of the units of Company B in exchange for shares of Company A
3) Company B unit holders will receive shares in Company A in the same proportion as they previously held their units in Company B
4) Existing Company A shareholders will have their shares in Company A cancelled and will receive shares in Newco in the same proportion as they previously held in Company A. Step 4) immediately follows Step 3).
5) Company A (which is now the UPE of Company B) will rename itself Company B, and Newco (which now owns the former Company A), will rename itself Company A.

Once this series of transactions is completed, there will remain two independent companies, each with the same assets it held previously and the same shareholders. However, Company B will now be a corporation, and not an income fund. We consider this transaction to be akin to a recapitalization in which a new parent company is interposed between an existing parent company and its shareholders, which is exempt (see ABA Practice Manual, Int. 19). The only wrinkle in this case is that the new parent is not a newly created entity, but an existing entity that will not hold any of the assets it formerly held once the transactions are complete.

We look forward to speaking with you about the transaction later this afternoon.

Regards,

[redacted]

I don't see anything reportable. At the end of the day this is how I see the structure:

On the A side - Former shareholders of A Corp now hold voting securities of Newco in the same proportion that they held in A Corp. Newco holds all of the assets and liabilities of Old A Corp and renames itself A Corp.

On the B side – Former unit holders of Fund B now hold voting securities of A Corp (a shell) in the same proportion that they held in Fund B. A Corp holds all of the units of Old Fund B and renames itself B Corp.

So none of the players hold anything post-transaction that they didn't hold pre-transaction. The A side looks exactly as it did before. The B side has inserted a shell corporation between the former B unit holders and Fund B and they hold voting securities of the shell corporation pro rata to the units they held in Fund B.

Assuming all of these steps are happening contemporaneously, the transient "acquisition" of Fund B by A is not a reportable transaction.

B

6/25/09