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Verne, B. Michael

From: [REDACTED]
Sent: Thursday, September 17, 2009 12:44 PM
To: Verne, B. Michael
Subject: Query re Restructuring and IPO

Hi Mike,

A client intends to undertake an internal reorganization as part of a planned initial public offering. At present, its operations are held through two limited partnerships, LP1 and LP2. LP1 has three direct subsidiaries, Holdco 1, Holdco 2, and Holdco 3; LP2 has one direct subsidiary, Holdco 4.

Each of the partners in LP1 is also a partner in LP2, except for a few partners of LP1 that hold their interests directly in Holdco 4 (LP2's subsidiary) rather than in LP2 itself. Consequently, partners of LP1 that are also partners of LP2 hold a slightly greater interest of LP2 than they hold in LP1. We refer to the partners of LP1 that are also Holdco 4 shareholders as the "Holdco 4 Investors." Together, the partners of LP2 and the Holdco 4 Investors represent all of the partners of LP1, and we refer to them collectively as the "Investors."

The purpose of the restructuring is to transfer direct ownership of the Holdcos to a newly formed entity ("Floatco"), whose shares will be sold in the public offering. We believe that the proposed restructuring is exempt pursuant to 7A(c)(10) of the Act.

All of the steps will take place on the same day (i.e., the day of Floatco's public offering). The pertinent steps of the restructuring are outlined below.

1. LP1 is liquidated, and its interests in Holdcos 1, 2, and 3 are distributed to the partners of LP1 in the same proportion to their economic interests in LP1. LP2 is also liquidated and its interests in Holdco 4 are distributed to the partners of LP2 in the same proportion to their economic interests in LP2. (The Holdco 4 Investors retain their ownership interest in Holdco 4.) Following this step, each Investor will hold a direct interest in each of the 4 Holdcos and collectively, the Investors will hold 100% of the outstanding voting securities of the Holdcos.

We believe that this step of the restructuring is exempt from notification under Section 7A(c)(10) of the Act, which exempts the acquisition of voting securities if, as a result of the acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's percentage share of the voting securities of the issuer. This exemption has been applied to the spin-off of a subsidiary to the shareholders of its parent. See ABA Premerger Notification Practice Manual, 4th Ed., Int. 19.

2. The Investors exchange all of their shares in the four Holdcos for cash and possibly shares of Floatco and Floatco undertakes a public offering of Floatco shares. For a brief moment in time – immediately prior to the IPO – it is theoretically possible that one or more of the Investors will hold a percentage interest in Floatco that is greater than its interest in a given Holdco following Step 1. However, post-IPO, no Investor will hold an interest in Floatco greater than its interest in any Holdco following Step 1. Moreover, none of the partners of LP1 or LP2 will hold an interest in Floatco greater than its pre-restructuring interest in LP1 or LP2. Accordingly, we believe that this step is also exempt pursuant to 7A(c)(10) of the Act.

I would be grateful if you could please confirm that you agree with our analysis that no filing is required. I am happy to discuss any questions you may have at your convenience.

Regards,

[REDACTED]
[REDACTED]

AGREE -
BN
9/18/09