

801.30

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Monday, November 02, 2009 5:40 PM  
**To:** Verne, B. Michael  
**Subject:** HSR question

Mike,

This follows up my voicemail. In our hypothetical, there are two directors of a publicly-held company, each of whom has holdings of voting securities in excess of the statutory threshold (\$65.2 million). These holdings represent 15% and 10%, respectively, of the company's stock. Both directors have assets that meet the size of person test, and the company (a manufacturer/retailer) has sales and assets that meet the test.

The directors' acquisitions of their holdings took place through an IPO that occurred last year. Because the IPO reduced the directors' percentage ownership interests in the company, the acquisitions were exempt under 15 USC 18a(c)(10).

One director now wishes to sell a portion of his holdings (worth about \$3.0 million) to the other in a private transaction. Because the buying director's holdings already exceed the statutory threshold, it appears his acquisition of the additional shares will constitute a Rule 801.30 transaction that requires the buyer (as the acquiring person) and the company (as the acquired issuer) to file HSR reports.

We are determining whether any exemptions may apply to the private sale. The issuer does not qualify for any of the industry or asset-specific exemptions (for example, relating to acquisitions of certain mineral interests or non-productive real estate). This will be a sale, not a gift or a loan. And although the directors are members of the same immediate family, they are not spouses, nor is one the minor child of the other. Both are adults who do not, individually or together, have contractual power presently to designate 50% or more of the company's board of directors.

If you are aware of any other exemptions that might apply, I would very much like to talk.

Thanks.

[REDACTED]

*CAN'T THINK OF ANY EXEMPTIONS*

*BM  
11/3/09*

[REDACTED]

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