

801.40
802.4

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, November 05, 2009 3:56 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Joint Venture Formation

Mike,

Please call me to discuss the following factual scenario unless you agree with the analysis below and believe that no call is necessary.

A and B agree to form joint venture C, a Delaware corporation. A will: (i) contribute \$40 million in cash to C in exchange for 51% of C's equity; and (ii) advance \$235 million in cash to C as a loan in exchange for a note from C in the same amount. B will: (i) contribute unincorporated subsidiaries X, Y, and Z, but no cash, to C in exchange for 49% of C's equity; and (ii) issue a note to C in the amount of \$275 million in exchange for the \$275 million in cash C receives from A. You may assume that each of A, B, and C meet the size-of-parties test and that the loans from A to C and C to B reflect arm's length market terms.

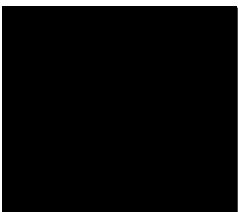
Based on these facts, we believe that none of the parties has an HSR filing obligation.

A has no filing obligation: Under Rules 801.40, 801.10 and Informal Interpretation 111 (ABA Manual, 4th ed.), A has no filing obligation because the value of its acquisition of C's voting securities is the determined price of \$40 million, which is below the minimum size-of-transaction threshold. For purposes of this analysis, the value of the loan from A to C is not included in the value of C shares acquired by A. See Interpretation 111. Because the size-of-transaction threshold is not met, the value of the assets held by the joint venture and the size-of-parties test as to A and C are not considered.

B has no filing obligation: Under Rules 801.40, 802.4 and 802.30, B has no filing obligation. The value of B's interest in C is undetermined. B may look through the acquisition of C shares to the value of C's non-exempt assets under 802.4. C's assets consist of the cash contributed by A and the assets (X, Y, and Z) contributed by B. The assets contributed by B to C are exempt under 802.30(c) as intraperson transfers. The remaining cash in C is exempt because an acquisition of cash is not HSR reportable. Accordingly, the value of the non-exempt assets being acquired by B is \$0.0, which is below the size-of-transaction threshold.

Based on the above, the described transaction would be non-reportable. *LIMITATION (w) 802.4*

Thank you in advance for your consideration of the above.



*AGNEE
BM*

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