

801.50
802.4

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, April 14, 2010 4:44 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Hart Scott Rodino / Question Regarding Formation of Unincorporated Entity

Mr. Verne,

Company A and Company B are forming a new limited liability company ("Company C"). Company A will contribute assets (over \$63.4 million) to Company C in exchange for a 50% limited liability company membership interest in Company C. Company B will contribute cash (over \$63.4 million) to Company C in exchange for a 50% limited liability membership interest in Company C.

Pursuant to Section 801.50, "in the formation of an unincorporated entity, even though the persons contributing to the formation of the unincorporated entity and the unincorporated entity itself may, in the formation transaction, be both acquiring and acquired persons, the contributors shall be deemed acquiring persons only and the unincorporated entity shall be deemed the acquired person only." Therefore, in connection with the formation of Company C, Company A and Company B, if necessary, would only file as an acquiring person and not as an acquired person.

We believe Company A is exempt from filing a notification report as an acquiring person in connection with the formation of Company C. Company A contributed assets to Company C and pursuant to Section 802.30(c), "assets or voting securities contributed by the acquiring person to a new entity upon its formation are assets or voting securities whose acquisition by that acquiring person is exempt from the requirements of the Act". Therefore, the assets of Company C are exempt with regard to Company A under Section 802.4. The assets contributed by Company A, however, are not exempt as to Company B. Therefore, because Company C has non-exempt assets in excess of \$62 million with regard to Company B, B's acquisition of the membership interests in Company C is not exempt under Section 802.4. Company B must file a notification to report its acquisition of the membership interests in Company C.

In conclusion, Company A is not required to file a notification report as an acquired person or as an acquiring person and Company B is required to file a notification report as an acquiring person and not as an acquired person in connection with the formation of Company C. Is this conclusion correct? If correct, we believe that Company C would be its own UPE in Company B's filing instead of Company A and Company B. Is this also correct?

Thank you in advance for your assistance in this matter.

Regards,

[REDACTED]

CORRECT ON BOTH
BW
4/15/10