

801.13(c)(1)

Verne, B. Michael

From: [Redacted]

Sent: Tuesday, May 11, 2010 12:19 PM

To: Verne, B. Michael

Subject: Noncorporate Interests

Mike,

Is the following scenario potentially reportable?

A holds 1/3 of the interests in Partnership X. B, a partnership, owns another 1/3 of Partnership X. B has no other assets. A acquires more than 50% of the interests in B. Assume that size of parties test is met and the value of 2/3 of B exceeds \$63.4 million.

A's acquisition of B is exempt under 802.4. Is B's indirect acquisition of control of X reportable? This informal interpretation suggests that it is not reportable but the facts of that interpretation are not 100% clear:

<http://www.ftc.gov/bc/hsr/informal/opinions/0511017.htm>

Thank you in advance,

[Redacted Signature]

This message is intended only for the use of the Addressee and may contain information that is privileged and confidential. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please erase all copies of the message and its attachments and notify us immediately.

Yes – 801.13(c)(1) requires aggregation of the non-corporate interests already held with the non-corporate interests that are being acquired. It doesn't matter whether the acquisition is direct or indirect. The letter you reference is using some bizarre non-HSR math to determine the percentages held in the lowest level LLC. If you look at the schematic on the original image of the letter you can see that Investment Partnership holds nothing but minority interests in two LLCs, so nothing below those LLCs is held as a result of the acquisition. Also, using the proper HSR math you can see that UPE of Acquiror already holds 70% of the lowest level LLC, so even if it was acquiring additional interests in that LLC (which it is not), the transaction would be exempt under 802.30. I think my note, concurred with by Nancy, was written before we had all of the facts because some of the percentages in the schematic are in my handwriting.

BW
5/11/10

Verne, B. Michael

802.30

From: [REDACTED]
Sent: Friday, November 18, 2005 12:30 PM
To: Verne, B. Michael
Subject: Confirmation re Indirect Acquisition of Unincorporated Entity



Dear Mike:

I had a chat with Karen Berg when you were out on Wednesday and she suggested I take up the following with you.

Attached please find a structure chart that reflects the following transaction. I am seeking confirmation that an indirect acquisition of "control" over the lowest tier unincorporated entity will not make an otherwise exempt transaction reportable.

In the transaction, the UPE of Acquiror is acquiring a 51% interest in the Investment Partnership from the Acquired Person. The purchase price for these interests is \$10M. My understanding is that one would determine the purchase price of this transaction under 801.10(d) by aggregating the acquisition price of the purchased interests and the fair market value of the interests in the Investment Partnership already owned by the Acquiring Person. I further understand that, pursuant to 802.4, one would exclude any value associated with the minority interests held by the Investment Partnership in the two LLCs shown on the diagram.

Nevertheless, we noted in this transaction that the acquisition of the partnership interest in the Investment Partnership would increase UPE of Acquiror's indirect interests in Project Company LLC from approximately 41% to greater than 50%. The value of greater than 50% of Project Company LLC is well over the size of transaction threshold. We wish to confirm that this fact does not change the above exemption analysis, i.e., that there is no reportable "secondary acquisition" in this transaction.

We believe this is the case based on the language of 801.10(d) which focuses solely on the interests in the unincorporated entity that is being directly acquired. Our understanding is that the effect of the transaction with respect to Project Company LLC is simply to make UPE of Acquiror the UPE of Project Company LLC with respect to future transactions involving that unincorporated entity.

I would like to confirm this with you and to get your views on the proper way to articulate why the indirect change of control in Project Company LLC is not reportable. I will call you today to see if you are available.

EXEMPT UNDER
802.30
B. Michael
11/18/05
N. OVUKA CONCURS

Before: UPE of Acquiror indirectly holds 41% of Project Co. LLC
 After: UPE of Acquiror indirectly holds 52% of Project Co. LLC

