

801.1 (d)(2)

**Verne, B. Michael**

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**From:** Verne, B. Michael  
**Sent:** Friday, September 16, 2011 10:49 AM  
**To:** [REDACTED]  
**Subject:** RE: hypo

[REDACTED] - we have encountered this managed account scenario already. Our position is that the investment advisors you describe are not considered associates, so you wouldn't need to drill down to the managed accounts. The fact that the manager does not have a material economic position in the account is a strong indication to me that the manager is not an associate of the investor (e.g., in a typical GP/LP relationship where the GP is directing the investment decisions of the LP, the GP generally has some equity interest in the LP that gives it the right to a percentage of the profits generated from the LP's investments). That does not seem to be the case in the account manager/investor relationship). The account manager/investor relationship looks more to me like a stockbroker making investments on behalf of an investor for a fee.

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**From:** [REDACTED]  
**Sent:** Thursday, September 15, 2011 3:38 PM  
**To:** Verne, B. Michael  
**Subject:** hypo

Hi, Mike:

We have a question for you as concerns the "associates" definition and hypothetical below. Assume that Partnership A is the filing party and an acquiring person. Partnership A – through its general partner - contracts with multiple third-party institutional investment advisors (such as Fidelity, State Street etc.) and certain non-affiliated individuals (collectively, the "Investment Advisors") to invest and manage certain of its funds (series or separate accounts). These are the two situations I am noodling with:

- Where Partnership A is investing in a target but the investment is not being made by a third-party advisor or with a series over which an Investment Advisor exercises discretion, none of the Investment Advisors would be considered to be associates of Partnership A. I think this is correct.
- Where Partnership A is investing in a target but an Investment Advisor is directing such investment or is investing with funds over which such Investment Advisor exercises investment discretion, such Investment Advisor becomes an associate (though none of the other Investment Advisors are associates in this example). Does the Investment Advisor only need to report the holdings of other entities over which it exercises investment discretion for Partnership A or another associate of Partnership A – for example, if Partnership A's general partner were General Partner A and it was also the general partner of Partnership B and Partnership B also had accounts for which the Investment Advisor exercised discretion. In other words, if you had a situation where Fidelity was the Investment Advisor, you wouldn't have Fidelity needing to drill down into all of its separate accounts and managed funds and report those.

Can we discuss when you have a chance if the above is way off?

Thanks,  
[REDACTED]

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