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Verne, B. Michael

From: [REDACTED]
Sent: Thursday, January 05, 2012 6:44 PM
To: Verne, B. Michael
Subject: Application of HSR Rules to Agricultural Cooperatives
Attachments: [REDACTED]

Michael,

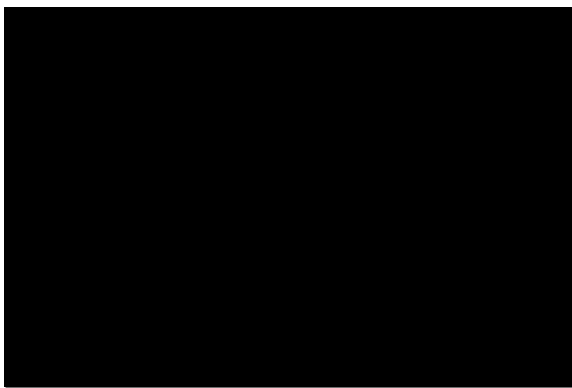
Please advise regarding the application of HSR rules to a merger involving two nonprofit agricultural cooperatives. My understanding is that, assuming the parties meet the applicable size of person thresholds and the transaction would meet the size of transaction threshold under HSR, there is no general exemption under HSR for a merger of two nonprofit agricultural cooperatives. Is that correct?

If my understanding is correct, is the merger treated as an acquisition of interests in an unincorporated entity by the surviving cooperative or as its acquisition of the *assets* of the non-surviving cooperative?

You should note that each of the agricultural cooperatives were formed as a nonprofit corporation under a state statute applicable to agricultural cooperatives, and each have members who are entitled to one vote each on matters submitted to members for their vote.

Any guidance you can provide to me on this issue would be greatly appreciated.

Thanks,



From the law offices of [REDACTED]

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You are correct – there is no general exemption for the merger of two agricultural cooperatives.

- 1) Are the members entitled to vote for the election of directors? If so, this would be treated as an acquisition of voting securities.
- 2) Do the members have the right to profits or assets upon dissolution of the cooperative? If so, this would be treated as an acquisition of non-corporate interests.
- 3) If neither of the above is true, this would be treated as an acquisition of assets.

BW
1/6/12