

801.50

Verne, B. Michael

From: [REDACTED]
Sent: Monday, February 13, 2012 6:15 PM
To: Verne, B. Michael
Subject: Consolidation v. Formation Question

Mike -

I hope that you are doing well. I would appreciate your assistance with an HSR question. If you need any additional information, please let me know.

NEWCO LLC will be formed.

UPE1, an individual, controls several LLCs. LLC-A and LLC-B are wholly owned, and LLC-C has a minority member not related to UPE1. UPE1 will contribute 100% of LLC-B and the controlling interest in LLC-C to NEWCO LLC in exchange for 78% of the membership in NEWCO LLC. UPE1 will retain ownership of LLC-A. The minority member of LLC-C will contribute its minority interest in LLC-C to NEWCO LLC in exchange for 2% of the membership in NEWCO LLC.

UPE2, also an individual, owns 100% of LLC-D. UPE2 will contribute 100% of LLC-D to NEWCO LLC in exchange for 20% of the membership interest in NEWCO LLC.

Each of the entities to be contributed to NEWCO LLC will remain as a subsidiary of NEWCO LLC.

We view this to be the formation of an LLC subject to 16 C.F.R. § 801.50, and not as a consolidation as defined in 16 C.F.R. § 801.2(d)(iii). As a result, UPE1 will have a filing obligation under the HSR Act if the size-of-transaction and size-of-person tests as described in § 801.50 are met. However, UPE1's acquisition of a controlling interest in NEWCO LLC may be exempt under 16 C.F.R. § 802.4 and 802.30(c) if the value of LLC-D is below \$50 million, as adjusted.

UPE2 will have no filing obligation because it is not acquiring control of NEWCO LLC.

Please let me know if you agree.

Thanks, as always for your help.

Best regards -

[REDACTED]

AGNES -
[Signature]
2/14/12

=====

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

=====

5