Gillis, Diana L.

Subject: FW: HSR Valuation Question

From: Walsh, Kathryn E.
Sent: Friday, January 30, 2015 2:27 PM
To: [redacted]
Cc: Gillis, Diana L.; [redacted]; Whitehead, Nora
Subject: RE: HSR Valuation Question

[redacted] as we just discussed, Diana and I think you have to include the borrowed funds because Newco is a subsidiary of the Buyer.

Best,
Kate

-------- Original Message --------
Subject: HSR Valuation Question
From: [redacted]
To: "Walsh, Kathryn E." <kwalsh@ftc.gov>
CC: [redacted]
Date: Tue, January 20, 2015 3:32 PM

Hi Kate,
Happy New Year! We are seeking your guidance with respect to the transaction described below, specifically (i) whether the borrowed funds in a leveraged buyout are counted as consideration for the voting securities to be acquired for purposes of calculating the size of transaction and (ii), assuming not, whether it is appropriate to deduct the value of the Target's non-voting securities from the Buyer's equity contribution to arrive at the size of transaction.

Buyer intends to acquire Target, a corporation, in a leveraged buyout structured as a reverse triangular merger. Buyer will form a Newco and a Merger Sub, both empty transaction vehicles created solely for the purpose of this transaction. The total enterprise value of the transaction is approximately $170 million, of which $40 million will go to holders of Target's non-voting stock, $20 million will go to option holders of the Target who are being cashed out at closing, and approximately $13 million of third party debt that will be paid off with the proceeds at closing. Certain management will exchange shares of Target for shares in Newco for approximately $5 million.

Simultaneously at closing, Target will (a) merge into the Merger Sub with the Target surviving as a wholly-owned subsidiary of Newco, (b) borrow $63 million from a third party. The proceeds of the Target's leveraging will primarily go to the current shareholders, together with Buyer's $102 million equity investment; as noted above $5 million of transaction value will be in the form of management rollover in the Newco for a total of $170 million.

For purposes of determining the transaction value, do you agree that we do not need to include the borrowed funds because the Buyer itself is neither borrowing nor guaranteeing the debt? The Target and the newly-created Newco, which serves only as a shell to hold the Target, are the only entities that will be bound to the debt (either directly or by way of guarantee). The Buyer is expressly not bound by the third party debt and is not guaranteeing the debt, though as part of the transaction it will create and control the Newco that ultimately holds the Target and guarantees the debt.

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If you agree, please confirm that you also agree that the transaction value is $34 million – i.e., the $102 million equity contribution and the $5 million in management rollover minus the consideration going to the holders of non-voting securities and the option holders and the third party debt that will be paid off at closing.

Thanks for your consideration.

Best regards,

[redacted]

[redacted]