

7A(c)(10)

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, July 20, 2004 4:33 PM
To: Verne, B. Michael
Subject: Exemption from Per-Merger Notification Filing Requirements

>>>> Please read the confidentiality statement below <<<<

Mr. Verne:

I believe the following transaction would be exempt from the pre-merger notification filing requirements:

DS is the founder and Chairman of the Board of Directors of X, but does not control X. DS has established two partnerships A and B for charitable and estate planning purposes. LLC is wholly owned by DS.

Partnership A - LLC contributed approximately \$5,000 of X's stock for a 1% general partner interest. DS contributed approximately \$475,000 of X's stock for a 96.98% limited partner interest. KB contributed approximately \$10,000 of X's stock for a 2.02% limited partner interest.

Partnership B - LLC contributed approximately \$2,000 of X's stock for a 1% general partner interest. DS contributed approximately \$220,000,000 of X's stock for a 98.94% limited partner interest. KB contributed approximately \$130,000 of X's stock for a .06% limited partner interest.

Proposed Transaction - B desires to sell \$220,132,000 of X's stock to A in exchange for an annuity obligation.

I believe that DS is the ultimate parent entity of A so DS is the acquiring person. X is the acquired person. Section 7A(c)(10) provides that "acquisitions of voting securities [are exempt], if, as a result of the acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of the outstanding voting securities of the issuer." In this fact situation, DS is essentially transferring X stock from one partnership controlled by him to another partnership controlled by him. His ownership in X will not increase as a result of this transaction. Based upon the exemption in Section 7A(c)(10) of the Clayton Act, I don't believe DS or X would need to file a pre-merger notification form.

I would appreciate your opinion as to whether you believe this exemption would apply under this fact situation. I would also appreciate your opinion as to whether DS and X would need to file a pre-merger notification form.

Thanks.

AGREE -
B. Michael
8/11/04