

801-11(e)
802.30
802.51

Verne, B. Michael

From: [REDACTED]
Sent: Monday, May 02, 2005 2:21 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Transaction Structure Chart for 5/3/05 Discussion

[REDACTED]

Mike -- As I indicated during our telephone conversation today, [REDACTED] and I would like to discuss with you the HSR analysis of a proposed transaction on which we are currently working. To facilitate our discussion, I have attached a structure chart that summarizes the multi-step transaction.

For additional context, I have included two URLs that link to a press report and a press release concerning the transaction:

[REDACTED]

As agreed, we will call you tomorrow (Tuesday) at 9:30am to discuss the HSR analysis, but if you have any advance questions, please feel free to contact me [REDACTED] or [REDACTED]

Thanks,
[REDACTED]

[REDACTED]

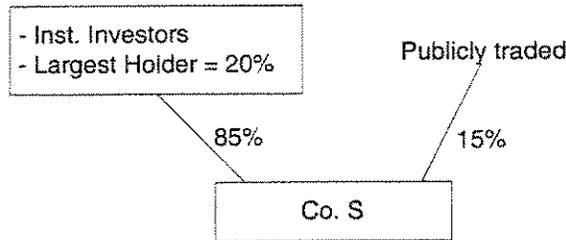
- 1) FORMATION OF TRUST A NOT REPORTABLE
- 2) FORMATION OF NEWCO IS EXEMPT UNDER 802.30
- 3) L ACQUISITION OF 11% OF NEWCO IS EXEMPT UNDER 802.51 (NO CONTROL)
- 4) TRUST (VIA NEWCO) ACQUISITION OF 85% OF S IS NON-REPORTABLE. TRUST/NEWCO HAVE NO SIZE UNDER 801.11(e).
- 5) TRUST ACQUISITION OF REMAINING 15% OF S IS NON-REPORTABLE 7A(c)(3).
- 6) L INCREASE TO 99% OF NEWCO IS EXEMPT UNDER 802.51 (NO CONTROL)
- 7) L ACQUISITION OF BALANCE OF NEWCO IS REPORTABLE & WILL BE FILED FOR.

M. OVURA CONCURS -
Burcher
5/2/05

CO. L'S ACQUISITION OF CO. S

Co. L has entered into a definitive agreement and publicly announced its intent to acquire 100% of Co. S through a multi-step transaction designed to accommodate non-U.S. regulatory hurdles.

Current



Step 1

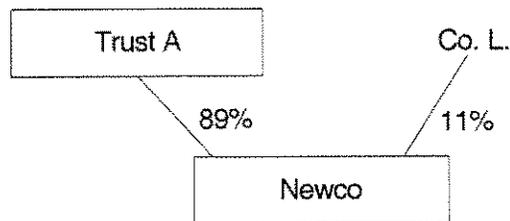
- 1.1 Trust A is formed by Co. S's outside legal counsel for the sole purpose of holding Co. S shares for a transitional period. Once the transition is complete, Trust A will be dissolved.

Step 2

- 2.1 Trust A forms a special purpose acquisition vehicle, Newco.

Step 3

- 3.1 Co. L (not currently a Co. S shareholder) purchases 11% of Newco for nominal/par value consideration.

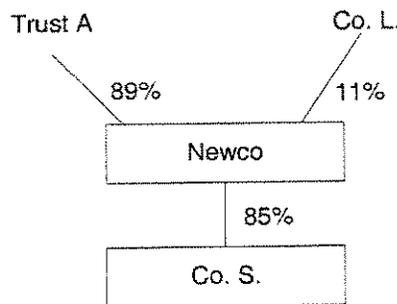


- 3.2 Co. L issues a promissory note to Newco that will be used as consideration for the 85% of Co. S held by the Institutional Investors.
- 3.3 Co. L loans Newco the money for a public tender of the 15% of Co. S in free float.

- 3.4 All “significant” actions of Newco require a 90% affirmative shareholder vote, e.g., Co. L has a veto.
- 3.5 Newco Board of Directors is composed of 3 directors, of which 1 is appointed by Co. L and 2 are appointed by Trust A.
 - 3.5.1 Newco Board actions require unanimity, except that Co. L has sole discretion in actions related to the public tender offer for Co. S shares.

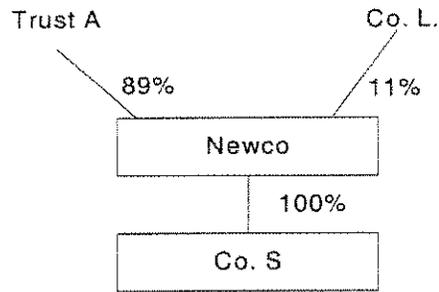
Step 4

- 4.1 Institutional Investors contribute their Co. S shares to Newco in exchange for their proportionate share of the promissory notes issued by Co. L (and originally contributed to Newco).



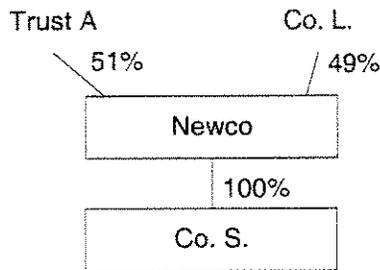
Step 5

- 5.1 With the loan from Co. L, Newco launches a public tender offer for 15% of Co. S.
- 5.2 Co. S Board of Directors is composed of 5 directors, of which 3 will be appointed by Trust A and 2 will be appointed by Co. L.
 - 5.2.1 Co. L director will be named chairman of Co. S.
 - 5.2.2 Co. L has a veto right regarding the appointment and removal of Co. S management.
 - 5.2.3 Co L. has veto rights over certain corporate actions by Co. S, including (i) purchase and sale of certain assets, (ii) material contracts with a duration in excess of 1 year, and (iii) amendment and termination of strategically significant business agreements.



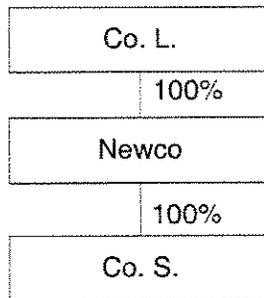
Step 6

6.1 Co. L. increases its holdings in Newco to 49% for nominal or no consideration.



Step 7

7.1 Co. L. acquires the balance of Newco for nominal or no consideration.



Assumptions:

1. All entities are Foreign Persons.
2. The equity of Co. S is worth more than \$53.1 mm.
3. Co. S has more than \$53.1 mm in US sales.
4. Trust A is its own UPE.

Analysis:

1. Over the next 12 months, Co. L intends to acquire the balance of Newco voting securities and will submit an HSR filing to that effect prior to its initial acquisition of Newco voting securities.
 - 1.1 The staged transaction is for regulatory purposes and fully contemplated as part of the transaction at the outset and provided for in the definitive agreement.
2. The formations of Trust A and Newco before contribution of the Co. S voting securities are HSR exempt.
3. At the time of Step 4, Trust A is arguably the UPE of Newco, the Acquiring Entity.
4. Step 4 – Newco’s acquisition of control of Co. S by acquiring the Institutional Investors’ Co. S shares is arguably a reportable event separate from Co. L’s acquisition of Newco/Co. S.
 - 4.1 But: Trust A has no economic risk; acquisition paid for by Co. L promissory note.
 - 4.2 If Co. L fails to acquire control of Newco by a date certain (12/31/08), the transaction unwinds and the Institutional Investors take back their respective Co. S shares and receive no consideration.
 - 4.3 Newco has the right to repay the loan that it received from Co. L for the purpose of acquiring the 15% of Co. S shares that were publicly traded, by tendering its remaining shares in Co. S to Co. L.
 - 4.4 Trust A has no authority to require Newco to undertake significant corporate actions (e.g., declare a dividend) without consent of Co. L.