

Verne, B. Michael

ITEM 3(d)

From: [REDACTED]
Sent: Thursday, April 13, 2006 9:27 AM
To: Verne, B. Michael
Subject: Item 3(d) Question

803.5

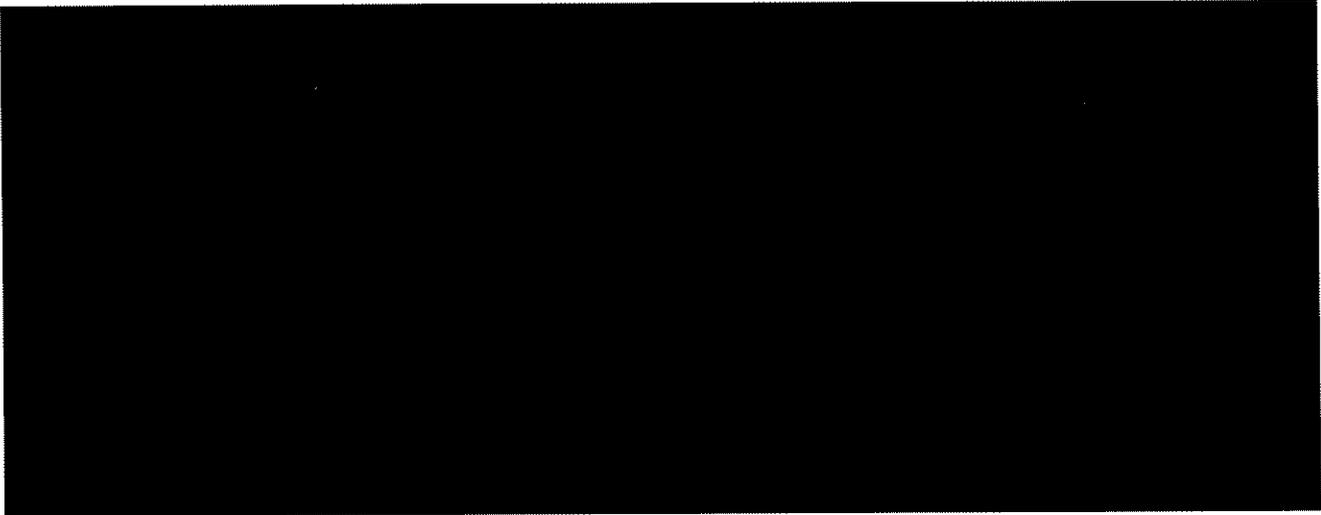
Mike,

I was wondering if you could provide some guidance regarding the following issue. A party has entered into a purchase agreement with an acquired person. However, prior to the consummation of the acquisition contemplated by the purchase agreement, that party will assign all of its right, title, and interest in and to, and all of its responsibilities, duties, and obligation (including payment obligations) under, the purchase agreement to a third party. The third party will then succeed to all of the rights, obligations, duties, etc., of the original acquiring person under the purchase agreement. It will consummate the acquisition with the acquired person.

Is it permissible to file a HSR filing for the third party as an acquiring person prior to the assignment to it of the purchase agreement? The HSR Form would note the contemplated assignment in a footnote to item 3(d), and the third party would execute the required affidavit under 16 C.F.R. 803.5(b)

Thank you for any guidance that you may be able to offer.

Best regards,



Yes, that's fine. In the affidavit the third party should reference the anticipated assignment of the executed agreement. Something like: A purchase agreement has been executed by A and B which will be assigned to C prior to the consummation of the acquisition.

B. Michael
4/13/06