

Verne, B. Michael

From: [redacted]
Sent: Tuesday, May 02, 2006 6:40 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: FW: description of transaction

Mike – I spoke with Nancy about my question below. She indicated that we could not take the approach I described. However, I am sending you the language I would propose to use to see if this makes it more clear. It seems similar to language we have used before in other transactions and actually results in a higher filing fee while giving our client more flexibility. In all events, the acquiring person is one or more newly-formed companies with identical shareholder, each of which is its own UPE.

Pursuant to a Purchase Agreement, it is anticipated that Company A, a newly-formed company, will acquire 100% of the shares of Company B in exchange for total consideration of \$X million.

It is possible, however, that instead of Company A, the Acquiring Person may be either of the following:

- * a newly-formed company (“Newco”), which may be established as a holding company for Company A; Newco will be owned by the shareholders, and in the relative proportion indicated, in Section 6(b) hereof.
- * Two or more newly-formed holding companies which are each owned by the shareholders, and in the relative proportions indicated, in Section 6(b) hereof.

The consummation of the transaction is subject to certain conditions stated in the Agreement, including the filing of this Notification and Report Form for Certain Mergers and Acquisitions and the expiration or termination of the applicable waiting period pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. The parties intend to consummate the transaction as soon as practicable following the satisfaction or waiver of the conditions set forth in the Agreement.

Please let me know your thoughts.
Thanks,

[redacted]

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From: [redacted]

Sent: Friday, April 28, 2006 11:58 AM
To: 'Verne, B. Michael'
Subject: question

Hi, Mike -

We are representing an acquiring person in connection with an acquisition of certain voting securities, assets and noncorporate interests of a company. The acquisition will either be made through a newly-formed company ("Newco") which is its own UPE or, for tax reasons, through two holding companies (the "Holdcos") which are not under common control but which are newly-formed and their own UPEs. Although the Holdcos are not controlled by anyone, the ownership of each is the same and is the same as Newco. Can we make the filing on behalf of Newco and describe these other possibilities in the text of Item 3(a)?

Thanks,

[Redacted]

[Redacted]

IF THE TWO HOLDING
COMPANY STRUCTURE IS
USED, EACH WOULD
HAVE TO FILE NOTIFICATION

N. OVUM CONCURS-

B. Michael
5/2/06