

Verne, B. Michael

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From: [REDACTED]  
Sent: Wednesday, May 24, 2006 9:28 AM  
To: Verne, B. Michael  
Subject: A scenario with questions

Michael:

I have an unusual transaction on which I need confirmation of the procedural way we propose to handle it.

There is currently a foreign issuer whose stock is held 60% by X and 40% by our Client.

Some time ago these two shareholders entered into a right-of-first-refusal buy-sell arrangement, under which either of the two shareholders can formally offer to purchase the other shareholder's shares on 30 days notice. The shareholder receiving the offer has 30 days in which to agree to the sale, or to make a counter-offer to acquire the original offeror's shares.

Our Client intends to offer to purchase all of X's holdings of the foreign issuer for cash. The transaction will require HSR Act filings. I have previously discussed with you that our Client's offer to acquire the outstanding 60% interest would receive cash tender offer treatment, even though there is only one other shareholder and the offer will be made directly to that shareholder pursuant to an agreement. Thus, our Client intends to make its HSR filings and give appropriate notice to X (as the ultimate parent of the foreign issuer) of its need to make its own filing within ten days thereafter. We expect that X may well be uncooperative.

Our Client will obtain financing from an investment bank ("Bank"). Simultaneously with the Client's anticipated acquisition of the 60% of the foreign issuer that it does not already own, Client will transfer 100% of the stock of the foreign issuer to a corporate Holdco in which the Client and Bank each have a 50% interest (that transaction will be reportable).

Thus immediately following completion of the cash tender offer acquisition, Bank will hold 50% of the stock of the foreign issuer, and our client will hold the other 50% (each through Holdco).

Assume that all size-of-person tests are met or are inapplicable because of the size of the transaction.

1. Since Bank is not itself making a cash tender offer to the 60% holder, we have assumed that Bank's acquisition of the 50% interest will require a 30-day waiting period. (Please let me know if Bank could get cash tender offer treatment here.)
2. Because Bank will acquire its 50% interest simultaneously with the closing of the Client's cash tender offer purchase, we believe the acquired person for the Bank's acquisition of its 50% interest will be our Client (rather than X).
3. Because of the simultaneous acquisition of Bank's 50% interest at the closing of the tender offer acquisition, we believe that filings fees for the Client would be based on its holding 50% of the foreign issuer's stock (not 100%). Of course, Bank will also pay its own separate filing fee for its acquisition of the other 50%.

Please let me know whether you agree with this analysis or have any questions or comments on it.

Thanks.

[REDACTED]

[REDACTED]

2/3 - AGREE - BANK WILL HAVE  
A 30-DAY WAITING  
PERIOD.  
B. Juchala  
5/24/06

[REDACTED] made the following annotations.

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