

Verne, B. Michael

801.2

From: [Redacted]
Sent: Wednesday, July 12, 2006 12:50 PM
To: Verne, B. Michael
Subject: Question

Mike – I have a question for you.

Companies A, B and C will contribute cash exceeding \$226.8 million to a newco ("Newco") for purposes of an acquisition. Newco will be its own UPE and has no assets other than the cash contributed upon formation. Newco will merge with and into Company D with Company D surviving ("Transaction 1"). In connection with the transaction, existing shareholders of Company D (which is public pre-merger, private post-merger) will be cashed out with the exception of a few rollover shareholders. Former shareholders of Newco and the rollover shareholders will receive shares of Company D ("Transaction 2") in exchange for their shares of Newco or Company D, as the case may be. Certain of the rollover shareholders will decrease their percentage ownership of the surviving Company D and their acquisitions should be exempt under 7A(c)(10). Other former shareholders of Newco (who were not also shareholders of Company D) will receive greater than \$56.7 million of voting securities of Company D and otherwise meet the size of parties test if applicable (the "Filing Shareholders") and will file for their acquisitions of Company D securities.

Do you agree that it is appropriate to divide this transaction into two parts? And if so, do you agree that Transaction 1 is not reportable, only transaction 2 (by the Filing Shareholders and Company D)?

Thanks,



Agree -
B Michael
7/12/06

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