

802.4

Ovuka, Nancy M.

**From:** [REDACTED]  
**Sent:** Tuesday, August 15, 2006 3:53 PM  
**To:** Ovuka, Nancy M.  
**Cc:** [REDACTED]  
**Subject:** HSR 16 CFR section 802.4 Exemption

Hi Nancy.

I hope you are doing well.

I am writing to confirm my understanding of the advice you provided to me on the telephone yesterday concerning application of the 16 C.F.R. section 802.4 exemption to a transaction. Specifically, we discussed the following transaction.

The Facts

Company A ("A") is planning to purchase Company B ("B") in exchange for well over \$1 billion. The necessary HSR filings have already been made by Company A and Company B and the applicable HSR waiting period expired or was terminated less than 12 months ago.

Company X ("X") would like to participate in A's upcoming acquisition of B. To facilitate X's investment, A is planning to form two newcos -- US Newco and Foreign Newco. US Newco will purchase the US business of B and Foreign Newco will purchase the foreign business of B. X will invest \$500 million to acquire approximately 20% of US Newco and \$400 million to acquire approximately 20% of Foreign Newco. US Newco and Foreign Newco will then collectively acquire B.

The HSR Analysis

Based on our discussion yesterday, I understand that X's acquisition of 20% of US Newco and X's acquisition of 20% of Foreign Newco would both be exempt from HSR filing requirements under 16 CFR section 802.4 because X would acquire such interests as part of the formation of US Newco and Foreign Newco and the only assets of US Newco and Foreign Newco at the time of their formations would be cash -- an exempt asset under 16 C.F.R. section 801.21. I understand that so long as the money X contributes to acquire 20% interests in US Newco and Foreign Newco is used to acquire B, the exemption would apply to X's acquisition of 20% interests in US Newco and Foreign Newco. This would be true regardless of whether US Newco and Foreign Newco technically transfer the cash to B's interest holders in exchange for B or whether the ultimate parent entity of US Newco and Foreign Newco -- A -- aggregates the cash contributed by X with other sources of cash and uses such to acquire B. It would also be true regardless of whether X's acquisition of interests in US Newco and Foreign Newco occurs a few days before US Newco and Foreign Newco acquire B, or just minutes or seconds before such acquisition. Finally, it would also be true even if X borrows the cash that it will use to acquire 20% interests in US Newco and Foreign Newco from a third party lender who requires that the collateral for such loan consists of interests in the entities that will acquire and hold B.

Nancy, please confirm that my understandings about the application of the 802.4 exemption to the facts described above are accurate.

Thanks again for your help.

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]



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8/17/06

Agree  
T. Ouzka

M. Bruno concurs