

Verne, B. Michael

801.1
801.13

From: [REDACTED]
Sent: Monday, August 25, 2008 5:03 PM
To: Verne, B. Michael
Subject: HSR question

Dear Mr. Verne,

I have a question about how the name of the acquired person(s) ought properly to be reflected on the HSR notification and report form where some entities involved in an aggregated purchase of assets have more than one ultimate parent entity.

Facts:

Corporations A, B and C are each separately selling substantially all of their assets to the same buyer. The value of Corporation A's assets is approximately \$33 million. The value of Corporation B's assets is approximately \$2 million. The value of Corporation C's assets is approximately \$38 million. The total purchase price for all assets being acquired is approximately \$75 million. The purchases are expected to close simultaneously.

The voting securities of Corporation A are owned 50% by Revocable Voting Trust #1 and 50% by Revocable Voting Trust #2. Similarly, the voting securities of Corporation B are owned 50% by Revocable Voting Trust #1 and 50% by Revocable Voting Trust #2. The voting securities of Corporation C are owned 54% by Revocable Voting Trust #1.

My Analysis:

It seems clear that the settlor of Revocable Trust #1 is the sole ultimate parent entity of Corporation C and that the settlor of Revocable Trust #1 is also an ultimate parent entity of both Corporation A and Corporation B. However, Corporation A and Corporation B also each have a second ultimate parent entity, the settlor of Revocable Trust #2. Thus, as noted in Example 3 in Rule 801.1(a)(3)'s definition of "ultimate parent entity," Corporation A and Corporation B are each part of two acquired persons (i.e., the persons of which the settlors of the two revocable trusts are each the ultimate parent entities), while Corporation C is part of only one acquired person (of which the settlor of Revocable Trust #1 is the ultimate parent entity).

It also seems clear that the three transactions must be aggregated under Rule 801.13(b) and that the result is a reportable transaction.

Question:

How should the fact that Corporation A and Corporation B are part of two acquired persons be reflected on the HSR form in, for example, Item 1(a)? It has been suggested to me that (1) because the settlor of Revocable Trust #2 would have had no reporting obligation if only the assets of the two corporations of which he is an ultimate parent entity were being acquired and (2) because it is the acquisition of Corporation C's assets that causes the three transactions to be reportable under the aggregation rule, only the settlor of Voting Trust #1 (the UPE of Corporation C) should be considered the "acquired person" for purposes of completing the notification and report form. I am concerned, however, that if the PNO sees in our response to Item 1(f) that there are two UPE's for two of the selling corporations, our filing could be deemed in some way deficient unless we list both UPE's as

acquired persons in Item 1(a).

Do you have advice for me:

Thank you and best regards,



FILE WITH BOTH SETTLORS
AS ACQUIRED PERSONS.
B. Michael
8/28/06

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