

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, September 19, 2006 2:31 PM
To: Verne, B. Michael
Subject: Sale of two subsidiaries as a package

[Confidential]

Michael:

I have an issue with respect to the HSR treatment of the sale of two subsidiaries as a "package" and I cannot find definitive guidance on it. I think I know the answer, but wanted to confirm. Here are the facts:

Company A is a venture capital fund. It is the UPE of Company B. Company B has two subsidiaries, Company X and Company Y.

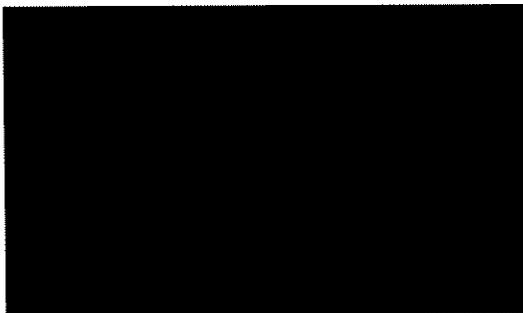
Company X and Company Y have been offered for sale as a "package." The draft securities sales agreement identifies each as a separate company and the stock of each will be purchased by a single buyer. Currently, it is expected that combined, the purchase price for the stock of both companies will be over \$100 million. After Company X and Company Y are sold, Company B will have no value.

Here are my questions:

- (1) Should the purchase of Company X and Company Y should be treated as two separate transactions. I think the answer is yes, but would appreciate confirmation of this.
- (2) If the purchase of Company X and Company Y are to be treated as two separate transactions, then the purchase price must be allocated to each company. (Presumably by the buyer?) Is this correct?
- (3) (Assuming size of the parties test is met) If the purchase price is allocated, and Company X is valued at \$60 million and Company Y is valued at \$40 million, then an HSR is not required for Company Y. Is this correct?

I appreciate any guidance that you can provide.

Thanks.



THE ACQUISITION OF THE
TWO SUBS SHOULD BE
AGGREGATED & TREATED AS
ONE TRANSACTION.

B. Michael
9/19/06