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801.40

Verne, B. Michael

From: [REDACTED]
Sent: Friday, February 02, 2007 7:54 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: FW: HSR Reportability

Hi Mike,

Hope all is well with you. [REDACTED] and I have the following reportability question.

1. A (US non-corporate entity) incorporates foreign corporation ("FC"). Not reportable
2. A sells some FC to B (foreign non-corporate entity) for cash. Not reportable sale of a minority interest in FC, in addition FC has no regularly prepared balance sheet and only asset is cash.
3. FC issues additional shares to A and B for cash. Not reportable
4. B and affiliated entities hold all of the outstanding shares of Target (foreign corporation with US subsidiary with sufficient sales/assets to cause an HSR).
5. FC incorporates foreign corporation ("FC Sub") contributes the cash. Not reportable
6. FC Sub uses the cash to purchase all of the outstanding share of Target from B and its affiliates in exchange for cash and FC Sub stock. Valued at over 59.8 million – reportable.
6. FC Sub stockholders (except for FC) exchange their FC Sub stock for FC stock. Not reportable
7. So at the end of the day B and its affiliates will receive cash plus an interest in FC for all of their Target (Reportable as an acquisition by A of more than 59.8 million of Target voting securities. Not reportable by B as an acquisition of Target, prior to transaction B held more than 50% of Target, FC's only asset is Target)
8. If B will hold 50% of FC. (Still not HSR reportable as an acquisition by B, FC's only asset is stock of Target in which B previously held more than 50%.)

Please let us know whether you would treat this as an 801.40 transaction or just a regular non-801.30 HSR. Of course we are more than happy to discuss this with you if you think it would help.

Many thanks as always for your guidance.

[REDACTED]

The only person who will hold voting securities that it did not hold prior to the transaction is B who will hold a controlling interest in A. Because pre-transaction all of A's assets are exempt, the B acquisition of A voting securities is exempt under 802.4. No current A shareholders would be required to separately file notification, because their acquisitions are exempt under 7A(c)(10). I would not treat this as an 801.40 formation.

Buehler
2/2/07