

Verne, B. Michael

801-2(2)

From: [REDACTED]  
Sent: Monday, March 19, 2007 9:04 PM  
To: Verne, B. Michael  
Subject: FW: Filing obligations in "double dummy" transaction

Mike,

Just wanted to make sure this didn't fall through the cracks while you were out on Friday.

Thanks,  
[REDACTED]

-----Original Message-----

From: [REDACTED]  
Sent: Friday, March 16, 2007 1:39 PM  
To: 'mverne@ftc.gov'  
Subject: Filing obligations in "double dummy" transaction

Mike,

In light of the complexity of my transaction, I thought it would be more helpful to write you rather than try to describe the deal over the phone.

The essence of this transaction is a merger between Company A and Company B, each of which is its own ultimate parent. For tax reasons, however, this transaction will have the "double-dummy" structure described below.

For purposes of this transaction, Company A has set up a new company ("Newco"), which it controls. Newco in turn has two subsidiaries called Dummy A and Dummy B. In the proposed transaction, Dummy B will merge with and into Company B, with Company B being the surviving entity. Immediately thereafter, Dummy A will merge with and into Company A with Company A being the surviving entity. As a result of these transactions, Company A and Company B will each be wholly-owned subsidiaries of Newco.

In consideration, the shares held by Company A's shareholders will be converted into the right to receive approximately 17.5 million shares of Newco common stock. Each share held by Company B's shareholders will be converted into a right to receive: (1) one share of Newco common stock; or (2) one share of Newco common stock and a non-transferable right to purchase a share of Newco common stock for \$19.00 per share; or (3) one share of Newco common stock and a non-transferable right to require Newco to repurchase that newly issued share for \$20.00 per share. The total consideration paid to Company B's shareholders will be approximately \$300 million and the total consideration paid to Company A's shareholders will be approximately \$350 million.

Depending on the which election is chosen by Company B's shareholders, Company B's shareholders could ultimately hold anywhere between 35% to 59% of Newco as a result of the transaction.

My questions are the following:

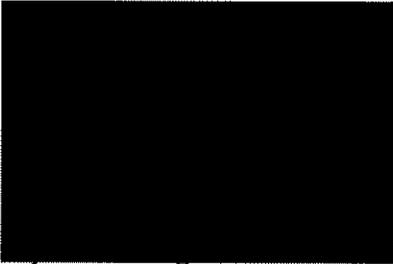
1) Am I correct that both Company A and Company B must file both as acquiring and acquired entities?

2) Is there a filing obligation for Company A shareholders that will hold more than \$59.8 million worth of Newco securities as a result of the transaction?

3) Is there a filing obligation for Company B shareholders that will hold more than \$59.8 million worth of Newco securities as a result of the transaction?

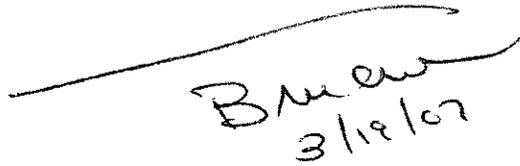
Please call me if you need more information or you would prefer to discuss this over the phone.

Thanks,



This e-mail may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.

- 1) Yes - A and B both file as acquiring and acquired persons - this is a consolidation.
- 2) Yes - any shareholder of A that will hold more than \$59.8 MM in Newco v/s (assuming 802.9 is unavailable) would have a potential filing obligation, unless that shareholder held a controlling interest in A prior to the consolidation and filed as A's UPE in the consolidation.
- 3) Same as (2)

A handwritten signature, possibly "Brew", is written in black ink. Below the signature, the date "3/19/07" is written. A long horizontal line is drawn above the signature.