

Verne, B. Michael

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From: [REDACTED]
Sent: Wednesday, March 21, 2007 8:25 PM
To: Verne, B. Michael
Subject: Reportability question stock for stock

Dear Mike,

Hope you are well. In the following transaction Corporation A is acquiring Corporation B through a merger of B into a subsidiary of A in exchange for A voting securities. After the merger B shareholders will hold 75% of A's voting securities. PIPE financing in which A hopes to issue additional voting securities valued at up to \$125 million is to occur simultaneously with the closing of the merger. B Shareholder presently holds more than 50% of B voting securities. After the merger B Shareholder will hold more than 50% of the voting securities of A.

I see three potentially reportable transactions:

1. Merger of B and A. B is not a publicly traded company and for such companies, if the acquisition price has not been determined, the acquisition price is the fair market value ("FMV"). I understand in stock for stock transactions in which one of the corporations is publicly traded and the value of the stock has not been determined, I understand that the FTC's position is that the parties may use the value of the publicly traded stock to determine the FMV of the non-publicly traded entity. If that is correct the FMV of the B stock will be equal to the value of publicly traded A stock. Under the terms of the acquisition agreement, B shareholders will receive 75% of A's voting securities in exchange for their B stock. As long as the total value of 75% of B's stock is less than \$59.8 million no HSR filing is required.

2. Receipt of A shares. A is a publicly traded company and for publicly traded companies the acquisition price is the market price of the company's stock or the acquisition price whichever is greater (Rule 801.10). Here, the acquisition price has not been determined so the acquisition price is the market price. The market price is the lowest closing price within 45 calendar days prior to the consummation of the acquisition (Rule 801.10(c)(1)). On March 13, 2007, CGI stock was trading at \$0.40/share, it has a total of 19,728,854 shares x \$0.40 = \$7,891,541.60. Unless any one shareholder will receive \$59.8 million of A voting securities no HSR filing is required.

3. Issuance of addition A voting securities valued at up to \$125 million (PIPE financing). Post merger Shareholder B will hold more than 50% of A and any subsequent acquisition by Shareholder B of additional A shares is exempt from HSR filings requirements under the intra-person exemption (Rule 802.30). To the extent any other shareholder will hold an aggregate of A voting securities valued at \$59.8 million or more as a result of the PIPE financing they may have a separate HSR filing obligation.

Please let me know your thoughts on the three transactions as always many thanks

[REDACTED]

To comply with IRS regulations, we advise you that any discussion of federal tax issues in this email was not intended or written to be used, and cannot be used by you, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party

I think that all of this should be viewed as one transaction. The only acquiring persons who will hold voting securities that were not held prior to the transaction are the shareholders of B receiving A stock, either as consideration for the merger and/or as a result of the new issue. If any of B's shareholders receive in total more than \$59.8 MM in A voting securities they would have a potential filing obligation.

Because B Shareholder (who currently holds > 50% of B) will also hold B post transaction through holding more than 50% of A, there would be no filing for the A/B merger, assuming B Shareholder's acquisition of > 50% of the voting securities of A is reportable.

Bruce
3/23/07