

Verne, B. Michael

802.10

From: [REDACTED]  
Sent: Tuesday, June 12, 2007 5:52 PM  
To: Verne, B. Michael  
Cc: [REDACTED]  
Subject: Request for Clarification - Applicability of HSR Act

Dear Mike,

I am writing to seek your advice about the following transaction:

Immediately prior to the relevant steps of the proposed transaction, the common stock of Company A will be held as follows: X, Y and Z will own, respectively, approximately 73%, 26% and 1% of the common stock of Company A.

1. X, Y and Z will contribute all of their shares of Company A to a newly-formed corporation (Newco) in exchange for a combination of notes, preferred stock, voting shares and non-voting shares of Newco. The various securities of Newco will not be issued to X, Y and Z on a pro-rata basis but, after this step, X will control Newco, which in turn will own 100% of Company A. Y will receive notes and non-voting stock of Newco and Z will receive only notes of Newco.
2. Newco will then merge with Company A and the shares of Newco will be exchanged for identical shares of the surviving entity except that Y will receive a voting preferred share of the surviving entity in exchange for its common stock of Newco.
3. After the preclosing steps outlined above, Q will acquire a minority interest of approximately 49% of the surviving entity with the result that none of X, Y, Z or Q will control the surviving entity for HSR purposes. We are separately considering the HSR implications of Q's acquisitions of shares of the surviving entity.

My specific questions are as follows:

1. Is the formation of Newco subject to §801.40 (even though it is in connection with a merger)?
2. If the formation of Newco is analyzed under §801.40, and the majority interest in Company A that is contributed by X can be excluded as to X under §802.30(c), is X's acquisition of voting securities of Newco exempt under §802.4 because the only remaining asset of Newco is a minority interest in Company A which can be disregarded when applying §802.4? X will continue to control the surviving entity after the merger, until step 3 above.

Please let me know your views.

Thank you in advance.

STEPS 1 & 2 ARE EXEMPT UNDER  
802.10(b).  
STEP 3 IS POTENTIALLY REPORTABLE

*BM*

6/12/07

IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code

Steps 1 and 2 are exempt under Section 802.10(b). Step 3 is potentially reportable.