

801.90

Verne, B. Michael

From: [REDACTED]

Sent: Tuesday, July 10, 2007 1:30 PM

To: Verne, B. Michael

Subject: HSR question

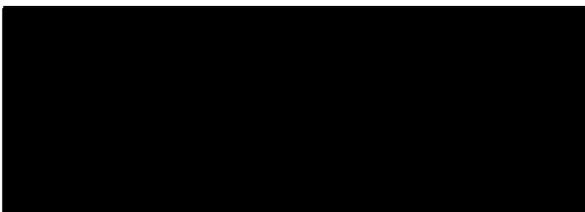
Hi Mike-

I write to get your interpretation of the following fact pattern:

Closely-held Company A intends to purchase Company B. The shareholders of closely-held Company A organize a new corporation, Company C, which has no balance sheet, and is its own UPE. Company A will use Company C to effect the transaction, and loans Company C enough cash to purchase Company B. Because Company C does not have a balance sheet, and its only assets are the cash used to effect the transaction, Company C's size of person is \$0. Accordingly, no HSR filing is required. Subsequent to Company C's acquisition of Company B, Company C repays Company A's shareholders in Company C stock.

- 1) Is there an HSR rule that precludes such a transaction?
- 2) Is the repayment of the loan a reportable event?

Thanks for any guidance.



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1. Unless there is some legitimate reason for organizing the transaction in this manner, it could invoke Section 801.90.

2. The repayment of the loan to A shareholders in C voting stock could be reportable for the shareholders if any one or more are individually acquiring securities valued in excess of \$59.8 MM and otherwise meet the jurisdictional requirements of the Act.

BM
7/10/07