

802.4

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, July 24, 2007 3:22 PM
To: Verne, B. Michael
Subject: Emailing: Informal Staff Opinion 0512009 - 801.10

Mike,

I am attaching an interpretation that I believe may be applicable to the facts below. Alternatively, I believe Section 802.4 may exempt this transaction as well.

Today:

Company A owns shares of Company B valued at approximately \$200 million and 1 million membership units that are convertible into shares of Company B (but carry no current voting rights).

Intermediate Step:

Company A will sell app. \$160 million of shares of Company B, retaining app \$40 million of Company B stock. Company A will also keep the 1 million convertible membership units. Company A will retain the cash from selling the shares of Company B.

Transaction:

Buyer (which has two UPEs) will merge a subsidiary with and into Company A, with Company A surviving. Buyer will pay app. \$33 million in cash that will go into Company A. Most of the Company A shareholders will receive cash for their Company A shares in the merger. The cash will come from that on hand at Company A and the cash from Buyer.

Each of the UPEs of Buyer will be left holding 49% each of Company A. Company A will consist of the \$40 million of Company B stock and one million convertible membership units. [An HSR would be required prior to converting the 1 million membership units.]

The direct acquisition of the Company B stock and the convertible membership units remaining in Company A would not be HSR reportable. But would the use of the cash from the sale of Company B shares by Company A to redeem Company A shares count toward the value of the transaction?

Thank you,

[REDACTED]

AGREE THIS IS EXEMPT UNDER SECTION 802.4
BM
7/25/07

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