

801.2

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Friday, October 05, 2007 12:37 PM  
**To:** Verne, B. Michael  
**Subject:** Confirmation on HSR Analysis

Mr. Verne:

I would like to call you to confirm our conclusion regarding the HSR filing requirements for a proposed transaction. In advance of my call, I thought it would be helpful to provide you with the following summary of the transaction and our conclusions:

- Company A has two shareholders -- S-1 and S-2 -- who each own 50% of the voting securities of Company A.
- Company A will merge into a wholly-owned subsidiary of Company B (the subsidiary of Company B will survive the merger, effectively resulting in the acquisition of Company A by Company B). Company B is a publicly-traded company that is its own UPE.
- As consideration for the merger, S-1 will receive newly-issued voting securities of Company B that will give S-1 more than 50% of the voting securities of Company B. S-2 will receive approximately \$65 to \$70 million in cash.

Based on this structure, we have concluded the following:

- S-1 is an acquiring person because he will control Company B after the merger. Company B controls the entity that survives the merger.
- S-1 will hold voting securities in Company B that he did not hold prior to the merger. The value of those Company B voting securities will exceed the HSR size-of-transaction threshold. Therefore, S-1 (as an acquiring person) and Company B (as an acquired person) must file for the acquisition of Company B's voting securities. Both parties meet the relevant size-of-person tests.
- The acquisition of S-2's Company A voting securities for cash is exempt under the 802.30 intra-person exemption because S-1 controls Company A at the time of the merger through his ownership of 50% of the voting securities.

Thank you for your help with this matter.



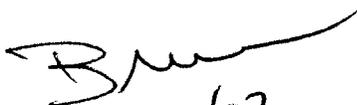
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I think you have the right result, but I don't think 802.30 comes into play. You look at the overall transaction under 801.2 to determine who the acquiring persons are. The three pre-acquisition UPEs in play are S1, S2 and B. S2 held 50% of A prior to the acquisition, and nothing afterward, so it is not an acquiring person. S1 also held 50% of A prior to the acquisition and continues to control A afterward, so in that portion of the transaction, A is not an acquiring person. S1 did not hold any of B prior to the acquisition and holds more than 50% after, so A is an acquiring person and B, as its own pre-acquisition UPE is the acquired person. Although technically, B holds voting securities of A post-acquisition, that portion of the transaction can be subsumed in the reportable ultimate acquisition of B by S1 and so is not separately reportable.

  
10/5/07