

ITEM 2
ITEM 3**Verne, B. Michael**

From: [REDACTED]
Sent: Tuesday, July 29, 2008 10:16 AM
To: Verne, B. Michael
Subject: HSR Questions

Mike,

Here are my facts and questions.

Facts: (1) An existing minority shareholder ("Buyer") of a private corporation is going to make an additional equity investment and acquire additional voting securities. (2) At closing, the Buyer's as well as other current shareholders' voting securities of the Seller Corporation will be converted into different classes or types of v/s. More precisely, all of the current v/s (both regular Common and various types of voting Preferred) will become "Class A Common" with one vote. (3) At closing, in addition, the Buyer will make an additional equity investment to acquire new shares. The Buyer will acquire Class B Common with two votes per share, and potentially additional Class A shares, for a total consideration of about \$120 million. (4) However, if Buyer ends up holding more than 50% of the outstanding v/s at closing or thereafter, its voting power will be limited to 49.9% of the total outstanding voting power by a Shareholders Agreement.

Questions

1. HSR Valuation

For HSR valuation purposes (and to determine the correct filing fee), the Buyer will need to add (1) agreed upon purchase price of new shares and (2) FMV of the v/s it already holds today.

2. Contractual Restriction under the Shareholder Agreement

Under the contemplated LOI, it's possible that upon closing, Buyer could actually own more than 50% of the outstanding voting shares. But, there will be a Shareholders Agreement provision that will limit the Buyer to vote only up to 49.9% of the voting power if its actual holding is more than 50%.

For HSR Item 2(d)(ii), do we see treat this acquisition as an acquisition of more than 50% of v/s? Or simply check the \$100 million (as adjusted) threshold box?

3. Number of shares being acquired in response to 3(c)(iii)

In answering Item 3(c)(iii), do we list just the number of the "truly new shares" being acquired?

My understanding is that I do NOT list the number of shares it holds today that will be converted into new classes of v/s. Or do I list those to be converted shares as well.

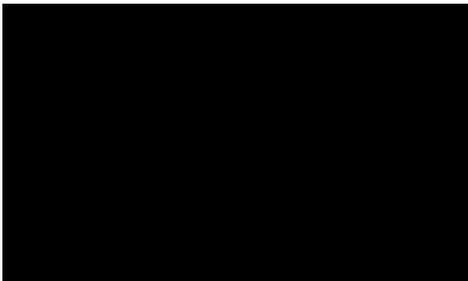
But then again, Item 3(c)(vi) does ask how many shares of each of v/s the Buyer UPE will "hold" as a result of the acquisition. Thus, I think this is where I list the total number of shares the Buyer will "hold" upon closing.

In other words, because the existing v/s will be converted into new class of v/s, do we treat that portion as a "new" acquisition as well?

For clarity, after just listing "truly new" shares, should I add a footnote in response to Item 3(c)(iii) that "x" number of the Buyer's existing v/s will be converted into a "y" number of new class of v/s separately from the "truly new" shares being acquired?

Thanks.

BW
7/29/08



Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, please send an email to 

1. Correct
2. 50%
3. 3(c)(iii) - report only the new shares to be acquired. Do not list the shares he currently holds that will be converted to a new class.
4. 3(c)(vi) - report the total shares that will be held as a result of the acquisition (new shares + currently held shares).