

*Transaction is
- Non-Applicable
2/13 & 1/15 Amendments*

Clark-Coleman, Sheila

From: [REDACTED]
Sent: Thursday, July 31, 2008 6:11 PM
To: Clark-Coleman, Sheila
Cc: [REDACTED]
Subject: FW: HSR Question
Attachments: [REDACTED]

Sheila,

I understand Mike is out until August 25, 2008. Is this something you could review for us?

Thanks,

Nancy

From: [REDACTED]
Sent: Thursday, July 31, 2008 4:51 PM
To: 'Verne, B. Michael'
Cc: [REDACTED]
Subject: HSR Question

Good afternoon, Mike.

I am writing to ask for your guidance regarding the need to file a notification with respect to a proposed transaction. I have outlined the facts of the transaction, a few conclusions we have drawn and a couple of questions for you in the attached power point. I have also included an organizational chart of the target that I hope will help you understand the facts a bit better.

Please feel free to call me if you have any questions or need any additional information.

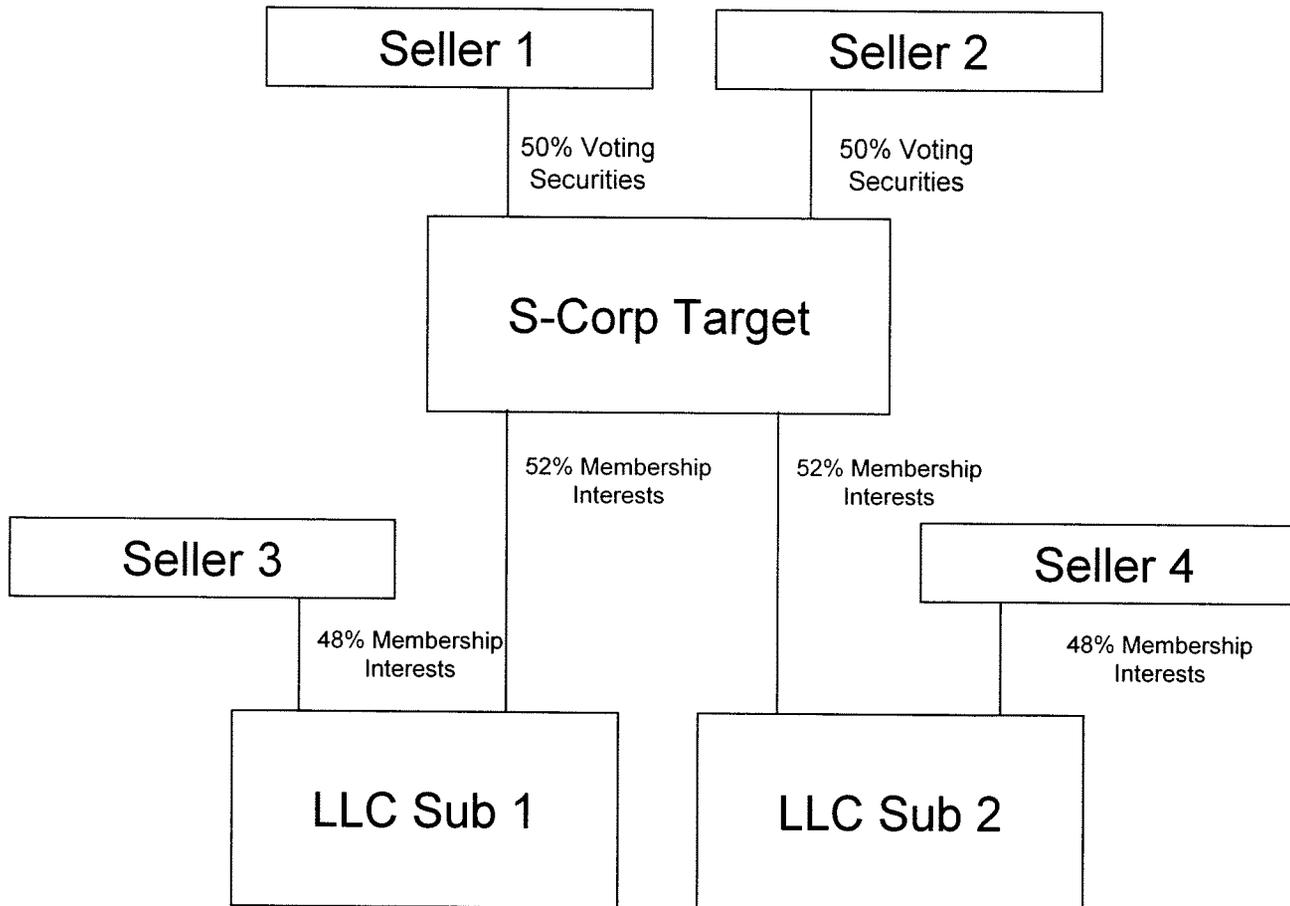
As always, thanks in advance for your assistance. We do appreciate it.

Regards,

[REDACTED]

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Facts

- Buyer intends to acquire 100% of the voting securities of S-Corp Target from Seller 1 and Seller 2 (50% from each) for an aggregate acquisition price of \$50 million (\$25 million payable to each of Seller 1 and Seller 2). This will result in the indirect acquisition by Buyer of 52% of the membership interests in LLC Sub 1 and 52% of the membership interests in LLC Sub 2.
- Buyer intends to acquire the remaining 48% of the membership interests in LLC Sub 1 from Seller 3 for \$12 million and the remaining 48% of the membership interests in LLC Sub 2 from Seller 4 for \$8 million.
- The transaction will be completed as a negotiated transaction among Buyer, Seller 1, Seller 2, Seller 3 and Seller 4.
- Following the acquisition, Buyer will own, directly, 100% of the voting securities of S-Corp Target and, either directly or indirectly, 100% of the membership interests in each of LLC Sub 1 and LLC Sub 2. The total acquisition price for the voting securities and non-corporate interests is \$70 million.
- Seller 1, Seller 2, Seller 3 and Seller 4 are all unrelated parties. The parties meet the size of the person tests.

Conclusions

- There is one acquiring person (Buyer).
- There is one acquired person (S-Corp Target), since S-Corp Target controls both LLC Sub 1 and LLC Sub 2.
- Seller 1 and Seller 2 are each a UPE of the acquired person (S-Corp Target).
- There is no secondary acquisition because LLC Sub 1 and LLC Sub 2 are controlled by S-Corp Target and are part of the same acquired person as S-Corp Target.
- LLC Sub 1 and LLC Sub 2 do not have to file as an acquired person because they are part of the same acquired person as S-Corp Target.
- Seller 3 and Seller 4 do not have to file because the size of the transaction is not met with respect to the acquisition of the non-corporate interests held by such Sellers.
- If a filing is required, Buyer, Seller 1 and Seller 2 will each have to file and Buyer will have to pay a single \$45,000 filing fee.

Questions

- Buyer will acquire voting securities and non-corporate interests from a single acquired person, in a single transaction, valued at \$70 million, which exceeds the current filing threshold. Although the acquisition price is split among 4 unrelated sellers, and no single seller will receive consideration for its respective voting securities and/or non-corporate interests in excess of the current filing threshold, we believe a filing is required. Please confirm that our understanding is correct.
- Section 801.30(a)(5) does not apply because Buyer is not acquiring voting securities (but is acquiring non-corporate interests) from a holder other than the issuer or an entity included within the issuer (Seller 3 and Seller 4). In the alternative, Section 801.30(a)(5) does not apply because the acquisition of the non-corporate interests of LLC Sub 1 and LLC Sub 2 from Seller 3 and Seller 4, respectively, are not separately reportable transactions because the size of the transaction threshold is not met with respect to those interests. If our understanding is not correct and Section 801.30(a)(5) applies, then will LLC Sub1 and LLC Sub 2 (as the issuers) be required to file a notification with respect to that portion of the transaction? Please confirm that our understanding is correct.
- This transaction, if reportable, is an acquisition of voting securities of S-Corp Target and an acquisition of non-corporate interests of LLC Sub 1 and LLC Sub 2, but is not an acquisition subject to 801.30. We would include the value of the non-corporate interests acquired from Seller 3 and Seller 4, but note the acquisition of these interests are not reportable as to Seller 3 or Seller 4 (and Seller 3 and Seller 4 will not be filing a notification). Please confirm that our understanding is correct.
- If any of our conclusions set forth above under “Conclusions” are not correct, please advise.