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801.10

1545C182(a)

**Ferkingstad, James H.**

**From:** [Redacted]  
**Sent:** Tuesday, August 05, 2008 11:20 AM  
**To:** Ferkingstad, James H.  
**Cc:** [Redacted]  
**Subject:** HSR Question

Hi James,  
Company Y proposes to acquire Company Z. Both Y and Z are their own UPE.

Pursuant to an Agreement and Plan of Merger, Company Y and Company Z agree to form a new company Holdco X, which is owned 73% by Y and 27% by Z. Holdco X will form 2 merger subsidiaries, Merger-sub A and Merger-sub B. Merger-sub A will merge into Y, with Y surviving. Merger-sub B will merge into Z, with Z surviving.

At the effective time of the mergers, (i) each outstanding share of Y's common stock will be converted into 2 shares of Holdco X common stock; and (ii) each outstanding share of Z will be converted into 1 share of Holdco X common stock. As a result of the mergers, Holdco X will be the new parent entity and Y and Z will be its subsidiaries.

We understand that under Rule 801.2(d)(2)(iii) Y and Z are both acquiring and acquired persons for purposes of the HSR filings requirements. Does Y complete its notification and report form as if it were literally acquiring Z and vice versa, or is it sufficient to describe the transaction collectively? If so, what is the size of the transaction for purposes of Item 2(d)?

Company Y has shareholders who will need to file individually for HSR clearance because the value of the Holdco X shares they will receive upon consummation of the transaction will exceed an HSR threshold. For these purposes, which entity would be the acquired person? If the acquired person is Holdco X, would X furnish information pro forma as if the transaction had been consummated, i.e., including information with both Y and Z as included entities. Must the Holdco form be certified by officers of both Y and Z?

Thanks.

Best,

[Redacted]

[Redacted]

[Redacted]

08/05/08

1. This is a consolidation  
FutW must be set  
for both entities  
2. shareholders of Y & Z  
receiving Holdco X  
v/s are subject to  
reporting requirements  
JMF

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