

801.2
802.9**Verne, B. Michael**

From: [REDACTED]
Sent: Wednesday, November 12, 2008 5:03 PM
To: Verne, B. Michael
Subject: Fw: HSR Informal Opinion

Mike,

I am following up on the advice below because the facts have changed from the perspective of my client (Person C in the email below). At this time, this information is confidential to my client; the other party is not aware of all of these changes.

Facts

Prior to the merger transaction, a new investor, Company PE, will acquire about 33% of the outstanding voting securities of Corporation B. Company C will hold the remaining 67% and, therefore, will still control Corporation B.

As before, Corporation B will then merger with and into Corporation A, with A continuing as the surviving company. As before, Corporation A will issue new shares of its common stock to the Corporation B shareholders as consideration.

Now, however, as a result of Company PE's investment and some changes in the number of shares being acquired, the post-merger shareholding structure has changed. Specifically, post merger, Company C will hold less than 50% of the outstanding voting securities of (the combined) Corporation A. Company C may hold up to 49% of the outstanding shares of Corporation A and may still have the voting power to appoint half the Corporation A board post-merger.

Analysis

In the structure below, you agreed with our view that it was exempt because Company C was the UPE before and after the acquisition and the only thing it was essentially acquiring was cash, which is exempt. Now, Company C may still be the UPE of Corporation A by having the ability to appoint half the board, but it will not be the UPE pursuant to 801.1(b)(1). Does this change the analysis?

If so, I think this means that there are two potentially reportable acquisitions:

1. Corporation B's acquisition of Corporation A via the merger. ?
2. Company C's acquisition of Corporation A stock. Would this be exempt, however, because Company C is acquiring shares in Corporation A, which post-merger only holds (a) cash, which is exempt and (b) Corporation B assets, which Company C controlled pre-merger?

(Of course, Company PE's pre-transaction acquisition of Company B stock is also potentially reportable if the SOT threshold is met.)

Thanks in advance.

11/13/2008

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Regards,

[REDACTED]

[REDACTED]

----- Forwarded by [REDACTED] on 11/12/2008 04:38 PM -----

[REDACTED]

05/19/2008 06:47 PM SubjectHSR Informal Opinion

Mike:

Thanks for taking the time this afternoon to discuss with us the HSR notification requirements of a proposed transaction. This will confirm our conversation and the advice you gave us with regard to (1) and (2) below.

Under a proposed merger agreement between Corporation A (the ultimate parent entity of person "A") and Corporation B (an entity included within person "C"), B will merge with and into A, with A continuing as the surviving corporation. In the merger, A will issue new shares of its common stock to B's shareholders, representing approximately 65% of the voting securities outstanding post-merger.

C is the ultimate parent entity of B, and as a result of the merger of A and B, it will receive newly issued shares of common stock of A, representing approximately 52% of the voting securities outstanding of A post-merger. Therefore, as a result of the transaction, C will acquire control of A, the surviving corporation.

(1) You agreed with us that, given that the merger of A and B and the acquisition of voting securities of A by C occur simultaneously, they should be viewed as a single acquisition in which C acquires approximately 52% of the outstanding

voting securities of A. Therefore, C is the only acquiring person in the transaction.

Upon consummation of the merger, A, the surviving corporation, will hold the assets that it held pre-merger as well as the assets of B.

A is a Special Purpose Acquisition Company, *i.e.*, a newly formed blank check company that went public a few months ago and raised cash for the purpose of effecting a business combination with an operating business. A currently holds only cash, and cash is considered to be exempt assets pursuant to §801.21.

Given that C is B's ultimate parent entity, C and B are currently the same person by reason of §801.1(b)(1). Therefore, the acquisition of B's assets by C is exempt from the requirement of the HSR Act under §802.30.

(2) In our conversation, you advised us that the acquisition of voting securities of A by C is exempt under §802.4 as the newly acquired assets of A will consist of assets (*i.e.*, cash) whose acquisition is exempt from the requirements of the HSR Act.

If our understanding of our conversation is mistaken, please contact either [REDACTED] or me [REDACTED] [REDACTED] at your earliest convenience. Thank you for your assistance in this matter.

[REDACTED]

[REDACTED]

Any tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties and is not intended to be used or referred to in promoting, marketing or recommending a partnership or other entity,

1. I assume you meant Corp A's acquisition of Corp B, and yes I agree that is potentially reportable.
2. In a stock for stock transaction both A's acquisition of B and any of B's shareholders' acquisition of A voting securities is analyzed as if a snapshot of A and B's holdings just prior to the merger. So when C is looking at its acquisition of A voting securities, the only thing A holds is cash. You don't have to look at A holding B post merger. So C's acquisition of up to 49% of A's voting securities would still be exempt under 802.4 (as would be PE's acquisition of A stock).
3. I also agree that PE's acquisition of B stock prior to the merger is also potentially reportable.

B
11/13/08