

801.10

802.31

7A(c)(3)

Verne, B. Michael

From: [Redacted]
Sent: Tuesday, December 09, 2008 1:03 PM
To: Verne, B. Michael
Subject: HSR Question -- Bankruptcy Proceeding/Time Sensitive

Mike --

I am writing to confirm that the following transaction relating to the emergence of a firm from bankruptcy will not satisfy the size of transaction test and therefore will not be reportable under HSR.

Company A is reorganizing in bankruptcy. Pursuant to the reorganization, Company B is purchasing 50% of what will be all of the newly issued and outstanding common stock of the reorganized Company A for \$44 million. Company B is also purchasing newly issued "Convertible Debt" from the reorganized company for \$85 million. The new convertible debt does not have any current voting rights, but may be converted to new common stock. Company A will have no other class of outstanding voting securities upon its emergence from bankruptcy

It is our understanding that Company B's acquisition of 50% of the new common stock will not be a reportable transaction because it will not meet the size of transaction test. Since the convertible debt being acquired does not carry any present voting rights, its acquisition should be exempt pursuant to Section 802.31. See also 16 C.F.R. § 801.1(f)(3) (acquisition of convertible debentures with no present voting rights exempt under 802.31), Therefore, the value of the debt should not be aggregated with the determined purchase price of the new common stock which, at \$44 million, falls below the current \$63.1 million size of transaction reporting threshold. Should any of the debt be converted at some future time into voting securities with a current right to vote for directors, the conversion will be examined at that point to determine whether it triggers an HSR filing obligation.

I would appreciate your advising me whether you agree with the foregoing analysis.

Best regards,

[Redacted Signature]

[Redacted Block]

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I agree - nothing reportable now. Also nothing reportable if the debt is later converted to voting securities because B will already hold 50%.

AGREE
BN
12/9/08