

802.10

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, April 07, 2009 4:24 PM
To: Verne, B. Michael
Subject: This week's puzzler

Mike: May I enlist your interpretational assistance on the following problem?

Corporate Issuer has multiple shareholders, none controlling.

Issuer will create an upstream corporate holding company ("Holdco") that will hold all of the voting securities of Issuer.

All of the current shareholders of Issuer will be offered the opportunity to contribute their shares of Issuer to Holdco, and to receive voting securities of Holdco in return.

I understand the PNO takes the position that if all the shareholders participate and everybody ends up with the same percentages of Holdco shares as they had of Issuer shares, no filings are required from anybody.

However, it is expected that some of Issuer's current shareholders may elect not to participate. They will continue to hold their shares of Issuer, and the shareholders electing to exchange their Issuer shares for Holdco shares will have the opportunity to acquire the unsubscribed shares of Holdco.

Assume for this purpose that some of the current shareholders of Issuer will acquire a larger percentage of Holdco shares than the percentage of Issuer shares they previously held, and others of the current shareholders of Issuer will acquire the same or smaller percentages Holdco shares than the percentages of Issuer shares they previously held.

Here are my questions. I assume the shareholders who acquire larger percentages of Holdco shares have to file, if SOP and SOT tests are met. Do the shareholders whose percentage holdings in Holdco do not exceed their percentage holdings of Issuer also have to file, assuming SOP and SOT tests are met?

In other words, do you extend that 7A(c)(10) and 802.10 analogy to this latter group of shareholders? Or is the entire formation of Holdco reportable? If it's reportable, is it reportable under 801.40?

Does it make a difference whether the participating shareholders acquire the additional shares of Holdco that the non-participating shareholders don't acquire, as opposed to just leaving those unsubscribed Holdco shares unissued? The result would be that participating shareholders' percentage holdings of Holdco would nevertheless exceed their percentage holdings of Issuer, because the denominator in the percentage calculation would be smaller.

Thanks, as always, for your help.

[REDACTED]

[REDACTED]

Yes – any shareholder that will hold a larger percentage of Holdco than was held in Issuer will have a filing obligation regardless of whether the mechanism is acquiring additional shares or reducing the total number of shares. Any shareholders that will hold the same or less is exempt. The formation of Holdco would not be reportable under 801.40.

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4/8/09