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Verne, B. Michael

From: [REDACTED]

Sent: Wednesday, April 08, 2009 1:51 PM

To: Verne, B. Michael

Subject: Merger question

Mike,

Thanks for your quick answer earlier this week. We have a more complicated transaction I wanted to run by you in respect to items 5-8. Corporations A Sub and B Sub plan to merge, and A Sub will be the surviving corporation. A Sub's UPE is currently A. B Sub's UPE is currently B. As a result of the merger, A Sub will be its own UPE (A and B will each own less than 50% of A Sub post-merger, a third unrelated entity will own the remainder). A Sub is not a newly-formed corporation. All entities are foreign issuers, so B's acquisition of a minority interest in A Sub will be exempt. A will file as the pre-acquisition UPE of A Sub, but it would seem anomalous for A to be the "acquiring person" and provide information as to items 5-8 for all entities it controls (a possibly show an item 7 overlap) when A will not hold B Sub voting securities as a result of the merger. Must A file items 5-8 with respect to all entities it controls or can it limit its 5-8 response to those of A Sub?

Thanks,

[REDACTED]

[REDACTED]

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I think A Sub can file as the acquiring person, because it is the only entity that will hold voting securities that it didn't hold prior to the transaction (other than B's non-reportable acquisition). A held voting securities of A Sub prior to the transaction and fewer voting securities of A Sub after the transaction, so A is not an acquiring person for HSR purposes.

BM
4/8/09