

7A (c)(10)

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, July 16, 2009 7:05 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Question re: (c)(10) exemption
Attachments: Public - Parent - Newco - Target Chart.PPT



Public - Parent -
Newco - Targ...

Mike,

I've attached a simplified structure chart for your reference in connection with a somewhat complicated question.

In 2005, our client, Parent, a publicly traded foreign trust, acquired Target, a privately held U.S. corporation. The transaction was structured as a series of steps and was ultimately exempt from the notification and waiting period requirements of the HSR Act, a conclusion the parties reached with assistance from you.

In connection with the 2005 transaction, the pre-transaction shareholders of Target (the "Retained Interest Holders" or "PPS Holders"), exchanged their existing interests in Target for Participating Preferred Shares ("PPS") in Target.

The Retained Interest Holders, as PPS Holders, were granted voting rights in Parent. A Class A Unit in Parent was issued to Target and gave its holder governance rights with respect to Parent so long as one of the Retained Interest Holders held a majority of the PPS. Target, as holder of the Class A Unit, votes the rights attached to the Class A Unit at the direction of a majority of the PPS Holders.

The PPS Holders also have exchange rights which entitle them to exchange their PPS for "ordinary units" of Parent or for cash.

In 2008, Parent completed its conversion from a trust to a corporation. In connection with the conversion, "Special Shares" of Parent were issued to Target, the holder of the Class A Unit, as a replacement for the Class A Unit. The governance rights and exchange mechanics remain unchanged as a result of the conversion, but the PPS Holders may now exchange their PPS for common shares of parent rather than "ordinary units."

The PPS Holders are expecting to exchange their PPS for common shares of Parent. Prior exchanges have not been subject to the notification and waiting period requirements of the HSR Act because they have failed jurisdictional requirements or have been exempt pursuant to Section 802.9 of the HSR Rules. One anticipated exchange, however, will satisfy

the jurisdictional requirements and will not be exempt because that PPS Holder will acquire in excess of 10% of Parent's issued and outstanding common shares as a result of the exchange.

We wonder, however, whether the acquisition of common shares of Parent by this one PPS Holder might be exempt pursuant to the statutory (c)(10) exemption? As described above, the PPS entitle PPS Holders to votes at the Parent level (as voted by Target (at the direction of a majority of the PPS Holders) as the holder of the Special Shares). The number of votes such PPS Holders are entitled to at the Parent level is calculated by assuming a full exercise of the PPS Holders' exchange right, so each PPS Holder will not acquire additional voting rights in Parent as a result of the exchange.

With respect to the Class A Unit, we wrote to you in an email in respect of the 2005 transaction that, "we also understand that the Class A Unit would be deemed a voting security. However, if [Target] is deemed to beneficially hold the Class A Unit, and if [Parent] is the ultimate parent entity of [Target] as a result of the [acquisition], then [Target's] acquisition of the Class A Unit would be exempt from reporting requirements under the intraperson exemption. Under the facts we have described, we understand that [Target] would be deemed to beneficially hold the Class A Unit."

Assuming the (c)(10) exemption is available in respect the exchange of PPS for common shares of Parent, would our prior reliance on the beneficial ownership of the Class A Unit (now replaced by the Special Shares) have any effect on our ability to rely the (c)(10) exemption? Although it is the PPS (and not the Special Shares) that are actually exchanged, we want to be clear that any prior reliance on the ownership status of the Class A Unit does not preclude application of the (c)(10) exemption in the above described exchange.

As always, many thanks Mike and please do not hesitate to call me if you have any questions.

[Redacted]

<<Public - Parent - Newco - Target Chart.PPT>>

[Redacted]

AGREE THIS IS EXEMPT
UNDER 7A(C)(10)
BJ
7/21/09

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