

801.1(c)
802.21

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, May 18, 2010 1:39 PM
To: Verne, B. Michael
Subject: HSR analysis re: transfer of beneficial ownership

Mike,

Thanks for the phone conversation earlier this afternoon; this e-mail is to confirm the analysis we discussed. The situation at issue is as follows:

A owns shares of issuer B for which A appropriately filed HSR. The waiting period expired and five years have passed such that A would now be required to file HSR for any additional acquisition of B shares. Entity C, affiliated with (and now part of and thus controlled by) B, filed for bankruptcy prior to its affiliation with B, and, as part of the reorganization process, holders of trade claims against C were issued shares of C which were then converted to shares of B when B acquired C. A acquired certain trade claims and had in the past received multiple distributions of B shares as part of the settlement process of those claims -- all of which were covered by A's previous filing under Rule 802.21 since they were within five years and no new HSR threshold was crossed. As part of its acquisition of trade claims, A acquired, over the course of two transactions, all trade claims belonging to Company D.

A was subsequently notified that there had been an error and a small number of shares that should have gone to A had been accidentally distributed to Company D. There were also some additional shares improperly distributed to D that will revert to B. The distribution to D occurred prior to the expiration of five years following A's HSR filing, but A was not notified of the error until after the five-year period expired per 802.21. A is now to receive the shares mistakenly distributed to D, and these shares will not cause A to cross a new HSR threshold.

As discussed, A's receipt of the shares mistakenly distributed to D should not be viewed as an acquisition subject to HSR filing requirements. Rather, because of A's previous acquisition of all trade claims properly distributed to D, A's ownership of all legal rights regarding the shares in settlement thereof, and further because the distribution of shares to D occurred within the five-year period prescribed by Rule 802.21, A is properly viewed as having received beneficial ownership of the shares at the time they were distributed to D. For clarity, A held all of the indicia of beneficial ownership to these shares including the right to gain/risk of loss, the right to vote the shares, and full investment discretion (including the power to dispose of the shares), and D would have been in violation of its contract with A had D tried to exercise those any of those rights. Because beneficial ownership transferred to A during the five year period prescribed by Rule 802.21, the current technical and corrective transfer of the shares to A is of no moment and is not a new "acquisition" that would require an additional HSR filing.

Thanks again for your help, and feel free to call or e-mail with any additional questions.

Best regards,

[REDACTED]

AGREE -
BM
5/19/10

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