

801.1(c)
802.51

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, September 08, 2010 9:45 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: RE: Beneficial ownership question

Thank you for taking the time, Mike.

We would like to confirm that no HSR filing is required as a result of the following transactions, because the foreign acquirer would not hold 50% or more of the voting securities of a foreign target:

Company A, a foreign acquiring person, is seeking to acquire additional voting securities of company B, a foreign issuer. (Assume that the relevant thresholds contained in 802.51 are exceeded.) At present, company A holds just below 30% of the outstanding voting securities of company B.

Company A now wants to raise a takeover offer for all the outstanding voting securities of company B. Even though the outcome of such takeover offer is not foreseeable, and it is not very likely that the offer will lead to company A holding 50% or more of the voting securities of company B, the risk cannot be excluded. Company A understands that, should it seek to hold 50% or more of the voting securities of B, the exemption from HSR filing contained in 802.51 would not apply. The offer is not conditioned upon satisfaction of the HSR requirements.

Therefore, company A would like to set up the following structure to ensure that it does not hold 50% or more of the voting securities of company B, at least until such time as any required HSR filings are submitted, and the waiting period observed:

Immediately following the close of the offer, company A will dispose of all shares which exceed 49.95% of the outstanding voting securities of B in the following ways:

(a) depending on the amount of the shares obtained in the offer, a significant part of them would be sold to a third party (Third Party 1) with all Third Party 1 having all rights pertaining to such shares including full voting rights, rights to dividends, and the right to sell and transfer the shares to third parties. There will also be a "cash settled total return swap" between Third Party 1 and company A which covers the economic risk of Third Party 1 in full in the event that the market price changes following a further resale of these shares, but excludes any physical settlement of shares.

(b) for at least approx. 0.05 % of the voting securities in excess of 49.95%, company A will sell those shares to another third party (Third Party 2) and immediately enter into a repurchase agreement which will only be settled if and when any required HSR filings are made and applicable waiting period observed. If the HSR Act obligations are not satisfied by a particular date, there will be a cash settlement mechanism in place similar to the one described under (a). In the meantime, Third Party 2 has full voting rights and all other rights pertaining to the shares, except that it would not be allowed to sell the shares.

The agreements described in (a) and (b), with Third Party 1 and 2, respectively, would both be executed prior to the closing of the tender offer.

Please confirm that our understanding is correct that, as a result of consummating the transactions described above, company A would not be deemed to hold voting securities of company B in excess of 49.95% of the outstanding voting securities of B, and thus no HSR filing would be required until and if A acquires additional shares of B by way of the repurchase agreement described in (b) or otherwise.

Please let me know if you have any questions.

Best,

AGREE -
BM
9/8/10

[REDACTED]

[REDACTED]

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