

802.4

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, January 06, 2011 12:40 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Advice -- Application of Rule 802.4

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Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

HSR Advice -- Application of Rule 802.4

Dear Mike:

We are writing to confirm our understanding of our telephone conversation with you on January 3, 2011 concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), of a proposed transaction discussed below.

Transaction Description

Buyer is a private investment fund and its own UPE. Seller is a publicly traded corporation. The transaction is structured as a merger, with the voting securities of the Seller to be retired at closing.

The total consideration to be paid to Seller's shareholders at closing exceeds the current HSR Size of the Transaction threshold of \$63.4 million. However, Seller's current balance sheet reflects significant cash. Seller's current balance sheet also reflects various liabilities, which Buyer will assume as part of the acquisition.

Analysis of Rule 802.4

In an acquisition of voting securities, Rule 802.4, as revised, allows the parties to look through to the underlying assets of the issuer or non-corporate entity to determine whether an HSR filing is required. Under Rule 802.4, as revised, the acquisition of corporate stock will be exempt if the entity whose stock or interests are being acquired does not hold more in non-exempt assets than the current HSR Size of the Transaction threshold of \$63.4 million. For purposes of determining the amount of non-exempt assets, Section 801.21 provides that cash and cash equivalents shall not be considered an asset of the person from which it is acquired.

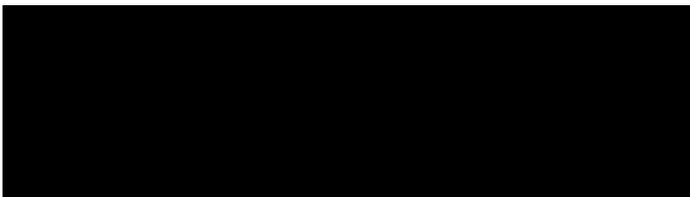
Conclusions

You advised that for purposes of applying Rule 802.4 to this transaction, the cash and cash equivalents of the Seller should not be counted as non-exempt assets, and there is no requirement to aggregate the value of assumed liabilities into the valuation of the non-exempt assets or to value the assets as if unencumbered by the assumed liabilities.

You also advised that for purposes of the Fair Market Valuation of the assets of the Seller, the parties may reasonably rely on the arms-length negotiated purchase price to be paid to Seller's shareholders at closing for the voting securities of the Seller, minus the cash and cash equivalents reflected on Seller's current balance sheet, even though that purchase price was established for a voting securities acquisition. Under this valuation, the current HSR Size of the Transaction threshold would not be met.

Based on this advice, the parties do not intend to report this transaction under the HSR Act. Please let us know as soon as possible if you disagree with any of the conclusions discussed above, or if we have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

AGREE
BW
1/2/11



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