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Verne, B. Michael

From: [REDACTED]
Sent: Thursday, April 07, 2011 1:27 PM
To: Verne, B. Michael
Subject: HSR Hypothetical

Mike,

Person A holds all of the Class 2 securities of Company A. Those Class 2 securities give him the right to appoint 70 percent of the board of directors of Company A. No other entity holds 50 percent or more of Company A's voting securities. Company A has a market capitalization of \$60 million. Company B has a market capitalization of \$300 million. Company A enters into an agreement with Company B. Under the terms of the agreement, Company A will form a special acquisition subsidiary into which Company B will merge. Company B will become a wholly owned subsidiary of Company A. The shareholders of Company B will receive 75 percent of the voting securities of the Company A. The former shareholders of Company A will receive 25 percent of the voting securities of Company A. As a result of the transaction, Company A will be its own ultimate parent entity.

It would appear that the "acquisition" of Company B by Company A is a reportable transaction as well as any acquisitions of the voting securities in Company A by the shareholders of Company B that otherwise meet the HSR thresholds. Person A's holding of shares in Company A, which is reduced as a result of the transaction, is not reportable.

The substance of the transaction appears to be Company B acquires Company A, but since Company B is its own ultimate parent, and Company A will control Company B as a result of the transaction, it would appear that Company B should ***not*** file as an acquiring person. (If Company B were the acquiring person, the transaction would likely not be reportable because the value of transaction would likely be below \$66 million.) The shareholders of Company B would file as acquiring persons of the new Company A, who's filing would have to reflect the addition of Company B. In that instance, is it permissible to refer to the data that's in the possession, custody or control of Company B as being unavailable to Company A, but in the filing provided by Company B?

Thanks for your help.

[REDACTED]

[REDACTED]

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Company A would file as both an acquiring and acquired person as it looks going into the transaction, so it would not include information on Company B.

BN
4/2/11