

801.30

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, November 08, 2012 6:33 PM
To: Verne, B. Michael
Subject: Question regarding Tender Offer Filing

Greetings Mike,

I'd be grateful for your guidance concerning a prospective HSR filing involving a friendly tender offer transaction. The parties will execute a merger agreement contemplating the merger of the buyer's merger sub with and into the target corporation, however the merger will not take place unless and until the buyer succeeds in purchasing a sufficient percentage of common stock via a public cash tender offer, in this case a substantial majority (>80%) of the outstanding common stock.

Accordingly, I have a couple questions that I would be grateful to hear from you on:

1. Because the success of the transaction depends on successfully obtaining enough shares on the open market via the tender offer, is it correct to deem this a transaction governed under 16 CFR 801.30? *YES*
2. Assuming the transaction is governed under 16 CFR 801.30, is it necessary or proper to submit the merger agreement in response to Item 3(b), as one of the "agreements" of the transaction? *NOT NECESSARY BUT PREFERRED.*
3. For purposes of providing a compliant 803.5(a) declaration, is it acceptable to reference the merger agreement as the form of notice to the seller that provides disclosure that buyer will engage in an HSR-reportable purchase of shares, and that the seller will have an HSR filing obligation? *NO - YOU NEED TO SEND A NOTICE LETTER TO THE ISSUERS & REFERENCE THAT IN THE AFFIDAVIT*

Drop me a line when you get a chance and let me know your reaction – I'd be grateful for your input.

Thanks,

[REDACTED]

BM
11/9/12