

**Verne, B. Michael**

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**From:** [Redacted]  
**Sent:** Friday, November 16, 2012 8:06 PM  
**To:** Verne, B. Michael  
**Subject:** Question re: pre-acquisition restructuring

Mike –

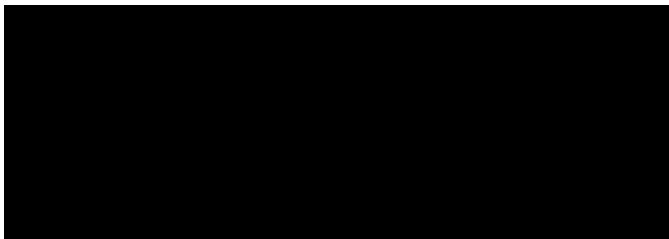
I understand that you're out of the office until Monday. I am in need of your guidance and I thought it would save some time if I sent you my question in writing, so that you'll have it waiting for you on your return.

I represent a family-owned business that is planning to sell a controlling stake to an outside financial investor. The company, a corporate entity (CorpA), is its own UPE, because each of its three shareholders holds less than 50% of its voting securities. The transaction will be structured as an acquisition of LLC interests and will be reportable under the Act, because it will confer control of a non-corporate entity and because the acquisition price will exceed \$200 million (as adjusted).

For tax reasons the shareholders will convert CorpA, which has a value in excess of \$200 million (as adjusted), into an LLC by merging it into a shell LLC (HoldLLC-2) two weeks prior to the transaction. HoldLLC-2 is included within HoldLLC-1, which is in turn included within a holding company (HoldCorp.) that is horizontal to, and has the same ownership structure – same shareholders, same ownership percentages – as, CorpA. At the closing of the transaction, the acquiring person will acquire a controlling share of HoldLLC-1. HoldCorp. and the acquiring person will submit notifications under the Act for that acquisition.

Although structured as a merger of CorpA into a sub of HoldCorp., in its effects the pre-transaction restructuring outlined above is more akin, I believe, to a reorganization that would be exempt from the Act under Rule 802.10. The three shareholders are simply converting a corporate entity, which they hold 40/40/20, into an LLC by merging it into a shell LLC sub of a shell corporate entity, which they also hold 40/40/20. If one of the shareholders held 50% of CorpA's stock, the restructuring would not be subject to the Act. That CorpA and HoldCorp are their own UPEs does not seem to me to be a distinction sufficient to require a separate HSR filing for the restructuring, but that is the question I'd like to discuss with you when you return to the office.

Thanks, Mike.



AGLEE -  
BN  
11/19/12

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