801.1(c)

Verne, B. Michael

From: [redacted]
Sent: Tuesday, January 28, 2014 4:28 PM
To: Verne, B. Michael
Cc: Walsh, Kathryn
Subject: RE: HSR Question

Thanks Mike. I have a related question on beneficial ownership but limited to a call option. Assume that the jurisdictional tests are satisfied.

An investor plans to purchase a call option for a publicly traded security from an investment bank. This would be an arms-length transaction under standard terms, i.e., the investor would not direct the investment or hedging activities of the investment bank. The investor would not have any voting rights, title, or authority to dispose of the stock. The strike price will be substantially below the current stock price. As a result, the investor will pay a significant premium for the option. This makes it very likely, but not certain, that the investor will ultimately exercise the option. The investor has the choice of settling in cash or taking physical delivery of the stock.

Under these facts, I believe that the investor's only indicium of beneficial ownership is the upside/downside from the investment and that, as a result, the option agreement is not reportable. Of course, the *exercise* of the option may be reportable. These conclusions would hold even if the strike price were a very small percentage of the current stock price. Do you agree?

[redacted]

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]
Sent: Tuesday, January 28, 2014 10:09 AM
To: [redacted]
Cc: Walsh, Kathryn
Subject: RE: HSR Question

Here is our current position on swaps:

Various scenarios involving swaps:

.Cash settled swaps are never a problem because the investor never receives any stock. He is essentially making a cash bet on whether the value of the stock will increase or decrease.

.Stock settled swaps, whether expiring on a future date certain or expiring due to a put-call arrangement being exercised by either the investor (call) or the investment bank (put), do not confer beneficial ownership of the stock to the investor at the time of entering into the swap arrangement. The investor may have an obligation to file and observe the waiting period prior to settlement if the statutory thresholds are met and no exemption (e.g., solely for purpose of investment) is available.

.Stock settled swaps, with or without a put-call arrangement, which allow the investor to in any way direct the investment/hedging activities of the investment bank at any point prior to settlement are problematic in that they begin to look more like an agency relationship. In such an arrangement, the investor is deemed to take beneficial ownership of the voting securities underlying the swaps at the time the agreement is entered into, not at the time of settlement.

BMV
1/28/14

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