
From: Walsh, Kathryn E.
Sent: Wednesday, June 22, 2016 12:57 PM
To: [REDACTED]; Gillis, Diana L.; Whitehead, Nora
Cc: [REDACTED]
Subject: RE: Question on reporting as merger vs consolidation

[REDACTED] we think this is a consolidation.

From: [REDACTED]
Sent: Wednesday, June 22, 2016 10:23 AM
To: Walsh, Kathryn E.; Gillis, Diana L.; Whitehead, Nora
Cc: [REDACTED]
Subject: Question on reporting as merger vs consolidation

Dear Kate, Diana, Nora,

We would like to confirm our understanding that the following transaction would be treated as a merger pursuant to Rule 801.2(d)(i) and (ii), and not as a consolidation pursuant to Rule 801.2(d)(iii), and that Parent in the scenario below will be an acquiring person only, and Company B will be an acquired person only.

In Step 1, prior to (but conditioned upon) the closing of the transaction, Company A, a foreign corporation, will form a new Bermuda company, Parent, for the purpose of the transaction. Also prior to the closing date, Parent will acquire, directly or indirectly, all of the voting securities of Company A held by its current shareholders, and the shareholders of Company A will receive all of the voting securities of Parent. There will be two classes of stock in Parent, Class 1 and Class 2. They will have similar economic rights, but Class 2 shares have greater voting rights. Company A shareholders can elect to receive Class 2 shares.

Step 1 and Step 2 may occur on the same day, and in any case Step 1 is conditioned on the satisfaction of the conditions to Step 2.

Then, in Step 2, Merger Sub, a wholly-owned subsidiary of Parent, also formed prior to closing, will merge with and into Company B, a US corporation (the "Merger"), with Company B surviving the Merger as a wholly owned subsidiary of Parent. It is also anticipated that, following Step 2, Company A will be a wholly-owned subsidiary of Parent, and a sister company of Company B.

In consideration for the Merger, Company B shareholders will exchange their voting securities of Company B for Class 1 shares comprising a collective minority of the voting securities of Parent. Certain Company B shareholders may exchange their voting securities of Company B for cash

pursuant to the redemption provisions in Company B's current organizational documents.

Assume that the acquisition by Parent of Company B would be exempt, as Company B holds only assets exempt under Rule 801.21. However, one or more US shareholders of Company B may have a filing obligation under Rule 801.2(e) for the acquisition of voting securities of Parent as a result of the merger of Company B and Merger Sub in Step 2. One or more US shareholders of Company A may also have a filing obligation in Step 1 to the extent their receipt of Class 2 shares in Step 1 increases their share of voting rights relative to their previous holdings in Company A.

We believe that, while each of Company A and Company B will be wholly-owned subsidiaries of Parent following all steps described above, the transaction nevertheless should be treated as a merger of Parent and Company B only, with Parent as an acquiring person only and Company B as an acquired person only, due to the sequence of the transactions and that Parent will become the UPE of Company A in Step 1, prior to the Merger in Step 2.

Do you agree? Please let us know if you require any further information.

Best,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
