

Haynes, Lanea

From: Shaffer, Kristin
Sent: Thursday, March 23, 2017 1:45 PM
To: [REDACTED]
Subject: RE: Filing Question

[REDACTED]

Thank you for writing this out. We view these steps a part of a single transaction, for \$95MM. Therefore, a filing would be required before any of them proceed.

Best regards,
Kristin

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From: [REDACTED]
Sent: Thursday, March 23, 2017 11:47 AM
To: Shaffer, Kristin
Subject: Filing Question

Kristin

Following up on our call, here is the fact scenario:

1. Buyer is acquiring 90% of the non-corporate interests of Company A for a purchase price of approximately \$55m.
2. The various parcels of real property on which Company A operates its businesses (the "Business Properties") are owned by Company B, which has the same UPE as Company A. The Business Properties have a value of approximately \$40m.
3. The Business Properties are not being purchased at the closing by Buyer, rather Buyer and Company B are entering into separate leases and an option agreement.
4. The option agreement is contemplated as a business accommodation for Company B so that Company B can identify substitute real property that it can purchase in exchange for a parcel of Business Property for purposes of effecting 1031 tax-free exchanges.
5. Under the option agreement, during the 11 month period following the closing, as substitute property is identified, Company B can require Buyer to purchase parcels of the Business Properties.

6. If Company B has not exercised its put option under item #5 for any parcels of the Business Properties by the end of the 11 month period, Buyer will buy all, but not less than all, of the Business Properties on or before the date that is 13 months after the initial closing.

7. In all scenarios under items #5 and #6, the purchase of the Business Properties is subject to closing conditions (e.g., clean title, no environmental conditions, no breach of leases, etc.). If the closing conditions are not satisfied, the applicable lease will continue and the applicable Business Property will not be purchased.

It seems clear to us that if all of the Business Properties were purchased at the acquisition closing, an HSR filing is required. Under the option agreement, the Buyer is obligated to purchase the Business Properties, however, those purchases are subject to conditions that may ultimately not be satisfied. It is not clear to us whether an HSR filing is required under this structure and, if it is, whether the filing is to be made prior to the initial acquisition or in connection with the purchase of Business Properties that exceed the filing threshold.

Let me know if you need more information. Thank you for your assistance.

Regards

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[Redacted]

[Redacted]

[Redacted]