

B. Michael Verne
1/11/02

From: Michael Verne
To: Karen Berg; Marian Bruno; Nancy Ovuka] - ALL CONCUR
Date: 1/11/02 8:00AM
Subject: Fwd: HSR question

Attached is the issue we were discussing late yesterday. Nancy and I have talked more about it this morning and conclude the following:

There are three questions to be answered:

1) Does beneficial ownership of A's pro-rata share of the B voting securities currently held by C pass to A at some point? We are in agreement that it does. A currently has the right to vote the shares, and investment discretion, the benefit of an increase and the risk of a decrease in value all pass to A. **YES**

2) When does beneficial ownership pass to A? When the board passes the resolution or when A elects to exercise its right to direct C to sell the B shares? Again, we are in agreement that beneficial ownership passes at the time that A gets the right (at the time the board resolution passes) even if A never elects to exercise that right. **YES**

3) The transfer of beneficial ownership does not necessarily mean that A has made an acquisition of the shares. This is the tougher question. In my view, there is no argument that after the board resolution, A holds both the shares of B it originally held, plus its pro-rata share of the B shares currently held by C. As a result, it will hold v/s of B valued in excess of \$50 MM, so that any additional acquisition of B voting stock will result in a reportable event. The question is whether at the time of the board resolution, A is deemed to make an acquisition of its pro-rata share of B stock currently held by C. **- YES**

