7A(c)10
Exemption

From: [redacted]
To: [redacted].SERIUS("AVillavicencio@ftc.gov")
Date: Fri, Jan 19, 2001 12:37 PM
Subject: Acquiring person

FROM:
[redacted]

Dear Alice:

The people in London are gone by now, but I believe that this is an accurate description of the transaction. If there is any change on Monday, I will let you know but I believe this to be completely accurate.

Broadly speaking, A, the existing holding company, will be succeeded by A1, at the same time that A1 acquires assets in the US.

Obviously, A1 must file for the new acquisition of assets in the US. However, the question is what happens when A1 (the new holding company) acquires the assets of A (the old holding company).

For purely technical reasons, it might appear that A1 should file as it acquires A and A's assets in the US. However, from any substantive point of view, this is nothing more than an internal corporate matter which inposes a new holding company on top of the existing corporate structure, with no change in control or equity ownership. For that reason, the only logical conclusion is that this is a "pass-through" or "continuum." From any substabtive point of view, the ultimate parent entity remains owned and controlled by the identical people. For that reason, we don't believe that there should be an indepedent filing for that part of the transaction.

Not transaction theory or continuum theory!

7A(c)(10) creating new holding company from an existing company sub becomes parent!

FACTS

The existing holding company is A, which has worldwide assets including B, a US sub.

A
|
B

The transaction for which we are filing has two parts.

FIRST PART

A1 (which will be A's new holding company) has been created and will buy a US company (D) through a Delaware subsidiary (C).

A1
|
C
|
D.

The delaware sub C will be merged into D and will not longer exist. (I believe this means that the acquiring person is technically B although the ultimate parent entity is obviously A1.) This is the part for which we were planning the filing.

SECOND PART

The assets of A are going to be transferred to A1. A will probably cease to exist.

A A1

B-------> | B D

At the time of the consummation, A is effectively going to be merged into A1. All the stock of A is going to be exchanged for A1 stock on a share by share basis. Each share's economic and voting rights are identical. The directors of A are going to become directors of A1. A shares and ADRs and going to bewithdrawn and their substitutes will be A1 shares and ADRs. The bottom line, however, is that there is absolutely no change of control. The new holding company will have the identical shareholders and directors as the old company; no outside influence is being introduced; and the result is identical to what in the US would be a share exchange. The only difference was due to British law, under which I understand that, there, a company does not incorporate as a wholly-owned sub its own successor.

Here, the successor company (which I believe is incorporated in Luxembourg but registered in the UK) was formally incorporated by counsel, and currently has no idependent existence or assets whatsoever. Its sole purpose is to serve as a successor to the existing holding company. I believe that the transaction was structured like this for tax reasons.

Under these facts, the substance of the transaction is the precise equivalent to a share exchange, a "pass through" or "continuum". The sole difference is that, for technical reasons, A1 was incorporated separately rather than as a wholly-owned subsidiary of A. However, in terms of control, A and A1 are functionally identical.

For these reason, I want to confirm with you that no separate filing would be required for part of the transaction under which A merges into A1.

Called 1/22/2001
Writer on
See notations - AV
P.S.
agrees