801.10

Verne Michael

From: [redacted]
Sent: Tuesday, January 20, 2004 4:32 PM
To: Verne Michael
Subject: HSR QUESTION

[redacted] Mike:

Please look over the attached scenario and call me with your thoughts or, if you agree that no filing is required, a simple e-mail reply to that effect will be fine.

[redacted]

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Agree - This is not reportable.

B. Michael

1/21/04

HSR QUESTION

Facts:

The target (Company A) is a corporation owned by individuals P1, P2 and P3.

The buyers are P3, P4 and an unrelated corporation (Company B).

The new securities of Company A will be issued in units consisting of 1 share of non-voting, non-convertible preferred stock and 1 share of voting common stock ("Units").

Transaction (all happening simultaneously):

- Company A borrows $15M from an unrelated bank.

- Company A redeems all of the common stock shares held by P1 and P2 and a portion of the common stock shares held by P3 for cash.

- Company A redeems the remaining shares of common stock held by P3 for Units representing a 10% interest in Company A valued at $8M.

- Company B pays $65M to Company A in exchange for Units representing a 80% interest in Company A.

- P4 pays $8M to Company A in exchange for Units representing a 10% interest in Company A.

- While Company A's relative control of the voting stock would enable it to elect a majority of Company A's directors, Company B, P3 and P4 enter into a shareholders agreement pursuant to which Company B will have the right to select a majority of Company A's directors.

Based on the liquidation preference and dividend rate on the preferred shares, nearly all of Company B's $65M purchase price is being attributed to the preferred shares and very little is being attributed to the common shares. Therefore, Company B will hold substantially less than $50M of common stock.

No one is acquiring common shares in Company A other than as part of the Units, so there is no independent basis for ascribing a particular value to the common shares.

The redemption price of the existing Company A common shares is not relevant to the value of the new shares because the capital structure (debt, preferred stock and common stock) that results from the transaction is inherently and materially different from the structure in place prior to the transaction.

Question: Do these facts support a conclusion that Company B will hold less than $50M of voting securities, making the transaction unreportable?

[redacted]