

Ferkingstad, James H.

From: [REDACTED]
Sent: Friday, August 12, 2005 10:35 AM
To: Ferkingstad, James H.
Cc: [REDACTED]
Subject: FW: HSR Question

Hi, James -

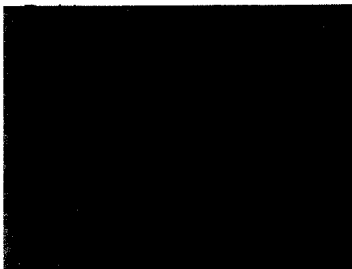
We were hoping to get your thoughts on the following situation:

Company A proposes to acquire 100% of the stock of Company B ("Transaction 1") and has made an HSR filing and received early termination of the waiting period. Before Transaction 1 will close, Company B is likely to acquire 100% of Company C ("Transaction 2"), an entity unrelated to Company A, via a separate purchase agreement; a letter of intent for Transaction 2 was not signed until approximately two months following the HSR filing for Transaction 1. Company B and Company C will each make HSR filings in connection with Transaction 2. As a result of Transaction 2, Company C will become included within the person of Company B.

Accordingly, at the time of the closing of Transaction 1, there will have been no change to the identity of the acquiring or acquired persons except that the acquired person, Company B, will include an entity (Company C) it did not hold at the time of its HSR notification for Transaction 1. After reviewing the applicable regulations, it seems that Company B should disclose in its Item 3(a) description for Transaction 2 that, subsequent to the closing of Transaction 2, Company B may be acquired by Company A, for which a separate HSR filing has been made and for which the waiting period has been terminated (and supply the transaction number). But it seems that Company A has no further filing obligation. Do you agree?

We can follow up to discuss if that is easiest.

Thanks,



8/12/05
agree

However if closing
of B/C transaction
occurs after A/B
transaction, then
A must file for
acquisition of C.
NO CONCURS
IF

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