

802.4

Verne, B. Michael

From: [Redacted]
Sent: Wednesday, February 01, 2006 7:37 PM
To: Verne, B. Michael
Subject: HSR Question

Mike, I have a transaction that I would like your comment on whether an HSR filing is necessary and thought it would be easier to explain in an email. I am representing the buyer who will be acquiring 100% of the voting securities of the Target Corporation and we will be doing an HSR filing for the acquisition. One of the minority shareholders ("X") of Target holds the voting securities of Target via a corporation ("Y"). For taxes reasons, X proposes that the buyer acquire Y rather than directly buy the voting securities of Target from Y. At closing of the acquisition of Y, the only assets in Y will be the voting securities of Target plus some cash for expenses. All other assets will be removed. The acquisition of Y will occur though a merger with a subsidiary of buyer and is valued in excess of \$56.7 million. (The transaction will close after the new thresholds take effect.) This acquisition will occur shortly before buyer's acquisition of the remaining voting securities of Target but is expected to occur the same day-basically simultaneously.

I believe that in this situation the parties can "look through" the acquisition of Y and treat it as the acquisition of the voting securities of Target and just do an HSR filing for the acquisition of 100% of Target's voting securities and not have to do a separate filing for the acquisition of Y. There is another minority shareholder who owns the target's voting securities via a corporation and would like to do a similar transaction as well. This transaction is valued at least than \$56.7 million. I do not believe that having two such acquisitions would change the analysis but thought I should mention it.

Thank you and I look forward to your response. If you have any questions please call.

Regards,

[Redacted]

[Redacted]

I agree that no separate filings would be required for the acquisitions of the corporations that have minority holdings in the target corp. Those acquisitions would be exempt under 802.4 and the secondary acquisitions of the voting securities of target corp would be subsumed in the overall acquisition of 100% of target corp's voting securities.

B. Michael
2/1/06