Verne, B. Michael 802.4

From: [redacted]
Sent: Tuesday, February 14, 2006 3:19 PM
To: Verne, B. Michael
Subject: HSR Analysis

Mike,

I thought email may be the most effective way to check our analysis of a HSR reportability question.

Our client, A, has formed a new corporation, B, for the purposes of acquiring 100% of the voting securities of Target. B is its own UPE and has no revenues or assets other than cash from A to be used to acquire Target's voting securities. B intends to acquire Target and issue 100% of B's voting securities to Target's management. In the same transaction, B will also issue A convertible voting securities and the contractual right to appoint 40% of B's board of directors. Upon conversion, A will have the right to appoint 100% of B's board, but A has no present intention to convert.

Our analysis is that:

1. B's acquisition of Target is below the size-of-the-person test as B is its own UPE and has less than $11.3 million in assets.
2. A's acquisition of B's convertible securities should be treated as an acquisition of 40% of B's voting securities (the portion of convertible securities that would convert into enough shares to appoint 40% of B's board per Int. 70). Since, 40% of the acquisition price is below the $56.7 million threshold no filing is required until A converts.

Is this correct?

Thanks for your time,
[redacted]

B Mich
2/14/06

---

1) I agree that B's acquisition of Target fails the size-of-person test.

2) B is issuing all of its own voting securities to members of management of Target? Presumably, no one person is acquiring a reportable amount of B voting securities.

3) A's acquisition of convertible non-voting securities would be exempt under Section 802.31. We would not treat this as an acquisition of the underlying voting stock that A would hold upon conversion. Interp. 70 is talking about acquiring convertible voting securities and getting an irrevocable proxy to vote the underlying shares that A would hold upon conversion. That doesn't look like what's going on here. I'm reading it that A is getting non-voting convertible securities and a contractual right to designate 40% of the board.