801.40
802.31

Verne, B. Michael

From: [redacted]
Sent: Monday, May 22, 2006 3:56 PM
To: Verne, B. Michael
Subject: HSR 801.40 Question

A question regarding 801.40:

A forms a new corporation, Newco, to acquire 100% of the non-corporate interests of B for $200 million.
C (B's CEO) will acquire 100% of Newco's voting securities for $5 million.
A will loan Newco $200 million to acquire B. In exchange, A will hold Newco convertible voting and nonvoting securities.

(1) A is a $113.4+ million person.
(2) Newco is a newly-formed entity without a balance sheet, no assets and is its own UPE until after closing (after closing C will be B's only UPE).
(3) B is a $113.4+ million person.
(4) C (B's CEO) assets are unknown so far.

Our analysis is as follows:
Under 801.40, even if the special size-of-person thresholds are met, no filing is required because:
- although A is an acquiring person and a contributor (Int. #179), A is exempt from reporting because of the 802.31 exemption (acquisitions of convertible voting securities).
- B is an acquiring person and a contributor (Int. #179) but B's acquisition of Newco's voting securities for $5 million does not meet the size-of-the-transaction threshold.

Under a traditional acquisitions analysis (non-801.40), a filing is not required because:
- Newco does not meet either size-of-person threshold as its only assets are to be used to acquire B (and it does not have a regularly-prepared balance sheet)
- A's acquisition of Newco's convertible voting securities is exempt under 802.31.

AGREE - THIS IS NOT REPORTABLE.
B Michael
5/22/06

Is our analysis correct?

Thanks for your time, we really appreciate it.

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