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**From:** [REDACTED]  
**Sent:** Tuesday, June 06, 2006 10:39 AM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** HSR Analysis of Proposed Transaction

Mike,

This email is to confirm our phone conversations with [REDACTED] regarding the analysis of a proposed transaction for purposes of HSR filing requirements.

#### Facts

As we discussed, our client (the "Corporation"), is proposing to recapitalize another company (the "Target"). The stock of the Target is currently owned by (i) a group of shareholders (including option holders) who are selling their interests in the Target (the "Selling Shareholders"), (ii) the Corporation, and (iii) a management shareholder of the Target who will transfer a portion of his stock in Target to the Acquisition Co. (as defined below)(the "Management Shareholder"). The stock of the Target consists of two classes, voting common stock and nonvoting preferred stock. In addition to the outstanding stock, there are a number of rights outstanding that are exercisable for common stock of the Target. We understand that the Corporation currently owns approximately 3.5% of the outstanding nonvoting preferred stock and 3% of the outstanding voting common stock of the Target (on a fully diluted basis), and the Management Shareholder currently owns 25% of the outstanding nonvoting preferred stock and owns or has rights to purchase approximately 20.5% of the outstanding voting common stock of the Target (on a fully diluted basis). The remainder of the outstanding stock and rights to purchase stock of the Target are held by the Selling Shareholders.

In the proposed transactions described below, the Target's capital stock has an estimated agreed value among the parties to the transactions described below of \$90 million, plus cash on hand (estimated at \$4 million), less third party debt (estimated at \$30.5 million), less transaction expenses, including certain compensation payments triggered by the transaction (estimated at \$2.5 million). Based on the estimates above, the agreed value of Target's capital stock is \$61 million, of which approximately \$49 million is allocated to the voting common stock of Target and approximately \$12 million is allocated to the nonvoting preferred stock of Target.

#### Formation of Acquisition Co.

The Corporation will contribute its preferred stock (with a deal valuation of approximately \$450,000)

and common stock (with a deal valuation of approximately \$1.45 million) in Target[1] <outbind://44/#\_ftn1> and approximately \$21 million in cash to a newly formed acquisition vehicle ("Acquisition Co.") in exchange for nonvoting common stock in Acquisition Co. and a warrant to purchase supervoting Class C common stock of Acquisition Co. (the "Warrant"). The Corporation will have the right to exercise this Warrant at any time to purchase a sufficient number of shares of Class C common stock at fair market value to give the Corporation voting control over Acquisition Co. The Management Shareholder will contribute voting common stock of the Target to Acquisition Co. valued at approximately \$3.3 million in exchange for voting common stock of Acquisition Co. In addition, certain employees of the Target will contribute \$1-2 million in cash[2] <outbind://44/#\_ftn2> to Acquisition Co. in exchange for voting common stock of Acquisition Co., and certain Selling Shareholders and the Management Shareholder will collectively receive warrants, exercisable at fair market value determined on the date of the formation of Acquisition Co., to purchase nonvoting common stock equal to approximately 5% of the fully diluted common stock of Acquisition Co. The Management Shareholder will have voting control of Acquisition Co. at the time these transactions are consummated by virtue of owning more than 50% of the voting common stock of Acquisition Co. These transactions are collectively referred to as the "Formation."

### Issuance of Stock of Target

Acquisition Co. will contribute approximately \$21 million of cash and certain shares of nonvoting preferred stock in the Target having a value of approximately \$450,000 to Target in exchange for Target issuing to Acquisition Co. new shares of voting common stock. These transactions are collectively referred to as the "Stock Issuance." [3] <outbind://44/#\_ftn3>

### Loan Transactions and Stock Redemption

Concurrently with the other transactions described above, Acquisition Co. and Target shall cause certain loans to be made to the Target and its subsidiaries in the approximate principal amount of \$67 million (collectively, the "Loans") [4] <outbind://44/#\_ftn4>. The Target shall use certain of the proceeds from such loans, the proceeds of the Stock Issuance and cash on hand to (i) pay down approximately \$30.5 million of existing debt of the Target, (ii) make compensation and expense payments of approximately \$2.5 million, and (iii) redeem all of the stock of the Target other than the stock held by Acquisition Co. (through the stock issuance or the stock rollover contribution by the Corporation and the Management Shareholder) (collectively, the "Redemption") for aggregate consideration of approximately \$55.8 million (constituting the \$61 million equity valuation less the \$5.2 million in rollover equity contributed to Acquisition Co. by the Corporation and the Management Shareholder), of which approximately \$44.3 million will be paid to holders of the Target's voting common stock and rights exercisable therefore (for total consideration of approximately \$49 million to holders of common stock once the rollover equity contribution is considered), and \$11.5 million will be paid to holders of the Target's nonvoting preferred stock (for total consideration of approximately \$12 million to holders of nonvoting preferred stock once the rollover equity contribution is considered). After giving effect to the Loans and the Redemption, all of the outstanding stock of the Target will be held by Acquisition Co.

## HSR Analysis

Based on our conversations, we understand that the proposed transactions described above are not reportable for HSR purposes because (i) none of the transactions included in the Formation or the Stock Issuance meet or exceed the minimum filing thresholds under the HSR Act, and (ii) the Redemption is an exempt transaction under the intraperson exemption described in Section 802.30 of the HSR Act, and the acquisition price of the voting common stock acquired by the Target in the Redemption does not meet or exceed the minimum filing thresholds under the HSR Act.

We understand from the Corporation that the structure of this transaction has a legitimate business purpose, including certain regulatory restrictions on the Corporation's acquisition of voting stock. The proposed transaction has not been structured to avoid the filing requirements of HSR Act. However, if this transaction were structured as a stock purchase by Acquisition Co. of all of the outstanding stock of Target, the transaction would be exempt from any HSR filing because the acquisition price of the existing voting stock of Target (including outstanding voting stock and rights to acquire the same) would be below the HSR filing threshold. Based on the valuations used in the proposed transactions described above, if the transactions were restructured as a direct stock purchase, Acquisition Co. would pay approximately \$49 million (\$90 million (enterprise value), plus \$4 million (cash), less \$30.5 million (debt), less \$2.5 million (compensation and expense payments), less \$12 million (nonvoting preferred)) for all of the voting stock of Target.

We further understand that the Corporation's exercise of the Warrant could result in a filing obligation under the HSR Act if the value of the voting stock of Acquisition Co. acquired upon exercise of the Warrant would exceed the applicable HSR filing threshold at the time of such filing.

Please confirm that this letter accurately reflects our discussions and your conclusion that no HSR filing is required in connection with this proposed transactions. As we discussed, we would also like to confirm that your analysis does not change due to the fact that the Management Shareholder ends up owning more than 50% of the voting stock of Acquisition Co.

Thank you very much for your help with this matter.

Regards,

AGREE  
B. [Signature]  
6/6/06