

801-2

Verne, B. Michael

From: [REDACTED]
Sent: Friday, July 28, 2006 9:12 AM
To: Verne, B. Michael
Subject: RE: HSR Reportability

Hi Mike--

I wanted to follow up on previous advice you gave me regarding the transaction below in my June 9th email. We agreed that it is reportable to Company C. My follow-up question refers to the timing of the reportability of the transaction and when the acquisition of C's interest becomes reportable. The parties intend to enter into a settlement agreement, based on the transaction below, but it now has this "optionality" aspect to it.

They will enter into a settlement agreement to effectuate the below transaction, but no transfer of ownership occurs unless and until either Company C triggers an option to effectuate a Sec. 351 exchange under the Internal Revenue Code, whereunder it will get the 14% interest in Holdco, or, when this option to exercise the Sec. 351 exchange automatically expires on December 31, 2007 and it becomes a binding commitment upon C to do the 351 exchange and get the 14% interest.

I looked at Interpretation 31, which states that the view of the FTC is that the granting of an option to purchase voting securities at some future time is, by itself, generally not reportable, although the exercise of the option may give rise to reporting obligations. If the grant of an option to purchase voting securities is however, coupled with an irrevocable proxy to vote the securities, it constitutes a transfer and may be reportable.

To me, this seems analogous to the "option" like scenario. Even if it is not exercised, and it subsequently becomes a binding commitment, my thought is that reportability hinges on when the transfer of the 14% ownership interest actually occurs--whether that is upon the exercise of the option or automatically upon the termination of the option on December 31, 2007.

I very much appreciate your time and consideration. I'm out of the country on business travel so, if it is not too much trouble, could you please send your assessment via reply email. Please don't hesitate to email with any follow up questions.

Thank you very much.

Best regards,
[REDACTED]

AGREE
B. Michael
7/28/06