

802.10

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[REDACTED]

[REDACTED]

November 10, 2006

**By E-mail**

Mike Verne  
Premerger Notification Office  
Federal Trade Commission  
7th and Pennsylvania Ave  
Washington, D.C. 20580

Re: Hypothetical Transaction

Dear Mike:

I am writing to confirm the substance of our telephone conversation yesterday, November 9, 2006, concerning the potential reportability under the Hart-Scott-Rodino Act of a proposed transaction described below (the "Proposed Transaction"). As you will recall, given the facts of the transaction we concluded that filing of a Premerger Notification and Report Form will not be required in this case.

Private Equity Fund (P), together with management, holds 100% of the voting securities of "Company A." Company A, together with its subsidiaries, has assets exceeding \$100 million. P is the UPE of Company A.

Several months ago, in an unrelated transaction, a Special Purpose Acquisition Company ("SPAC"), that is its own UPE, was formed. A SPAC is created as a shell company and then taken public in an initial public offering with the promise that it will enter into a business combination with an operating business within 18-24 months of the IPO. The SPAC raised net proceeds approximately \$54 million in its IPO, substantially all of which was deposited into a trust account controlled by an independent trustee and, aside from interest earned on the amount in the trust account, has no other asset.

But for tax considerations and structural considerations driven by the SPAC's certificate of incorporation, the transaction would effectively be styled as an investment by the SPAC in equity securities of Company A representing, immediately after closing, not more than 30% of the fully-diluted common equity securities of Company A for less than \$56 million. Under such structure, an HSR filing would not be necessary because the size of the transaction test would have not been met.

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To account for the tax and structural considerations specified above, the structure of the transaction is: (Step 1) SPAC has formed SPAC Merger-Sub; (Step 2) simultaneously (a) A will merge with and into SPAC Merger-Sub, and (b) SPAC will distribute newly issued SPAC shares to P and Company A management. After consummation of this merger, SPAC will remain as the parent company of SPAC Merger-Sub and will, for HSR purposes, be included within P. P and Company A management will not increase their per centum holdings in Company A, which will be included in SPAC Merger-Sub. Accordingly, you agreed that the transaction is exempt from HSR notification under Rule 802.10.

If you disagree with anything I have stated in this letter, please contact me as soon as possible. Thank you for your assistance and advice in this matter.

Sincerely,

[REDACTED]

AGREED  
Buehler  
11/10/06

[REDACTED]