

802.30

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, January 09, 2007 4:53 PM
To: Verne, B. Michael
Subject: HSR Question re Redemption of Shares

Dear Mike,

I have a question regarding a transaction involving a \$40 million purchase of securities combined with a \$20 million redemption of shares by the target, which redemption amount should be exempt pursuant to 802.30. I am aware of Formal Interpretation No. 190, which indicates that such structures can be considered transactions or devices for avoidance where the buyer is "instrumental" in causing the redemption. I also have reviewed several informal interpretations (including 0404012, 0403003, and 0503014) and have concluded that (1) there are legitimate reasons for the structure (including the desire to finance by debt rather than equity), and (2) as in 0404012 the target itself will take out the loan pursuant to the merger agreement.

An additional fact here is that the buyer will be the lender to the target for the \$20 million used to redeem the shares. But the buyer still is not paying any additional consideration here. Does this additional fact change the outcome of 0404012 such that the PNO would "look through" the transaction and conclude that the value of this transaction is in fact \$60 million as opposed to the \$40 million purchase price?

Any assistance would be greatly appreciated.

Regards,

IF THE BUYER IS FINANCING
THE REDEMPTION, THE VALUE
IS \$60 MILLION

[Signature]
1/9/07

[REDACTED]

[REDACTED]

Associated Offices: [REDACTED]

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