

7A(C)(10)  
802.9

Verne, B. Michael

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From: [REDACTED]  
Sent: Monday, February 05, 2007 10:18 AM  
To: Verne, B. Michael  
Subject: HSR Hypothetical

Confidential

Mike,

I wanted to confirm that the following transaction would not be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

Company A is a publicly traded special purpose acquisition company. Its assets currently consist of only cash or cash equivalents. Company B is a publicly traded corporation. Company B has a wholly owned subsidiary, B Subsidiary.

Pursuant to a proposed transaction, Company A will be merged into B Subsidiary with Company A as the surviving entity. As a result of the transaction, Company B will receive newly issued shares of voting securities of Company A accounting for the majority of the voting securities of Company A post close. The remaining voting securities of Company A will continue to be held by the same shareholders holding Company A voting securities immediately before the close of the transaction, the Pre-Close Company A Shareholders. The Pre-close Company A Shareholders will collectively hold a minority interest in Company A after the transaction closes as the interests of those shareholders will be diluted by the issuance of Company A voting securities to Company B.

Is the acquisition by Company B of a majority of the voting securities of Company A exempt under 16 C.F.R. Section 802.4 regardless of the value of those voting securities as Company A only holds exempt assets -- cash and cash equivalents -- pre-close, or is the acquisition potentially reportable given that Company A will acquire B Subsidiary as a result of the transaction, and B Subsidiary holds non-exempt assets?

Could you please also confirm that there would be no other potentially reportable event arising out of this transaction. Am I correct that Company A's acquisition of B subsidiary is exempt since B Subsidiary's parent pre-close, Company B, will control Company A as a result of the transaction through acquiring a majority of the voting securities of Company A? Does it matter that Company A will acquire B Subsidiary immediately before the controlling amount of Company A shares are transferred to Company B? Am I also correct that none of the Pre-close Company A Shareholders will be deemed to be making any acquisition for HSR purposes as a result of the proposed transaction. These shareholders will continue to hold the same number of shares of Company A, although their percentage ownership will be diluted, and Company A will now hold all interests that had been held by B Subsidiary.

Thanks.

[REDACTED]

The only person who will hold voting securities that it did not hold prior to the transaction is B who will hold a controlling interest in A. Because pre-transaction all of A's assets are exempt, the B acquisition of A voting securities is exempt under 802.4. No current A shareholders would be required to separately file notification, because their acquisitions are exempt under 7A(c)(10).

BN  
2/5/07