

802.4

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, March 27, 2007 3:56 PM
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Subject: Different Inquiry

It is my understanding that if four parties form a Newco to acquire a target and contribute their shares of target to Newco, the formation of Newco is not reportable even if the value of Newco shares received by one or more of the contributors exceeds \$60 million. The same result applies I believe-- although I have not had this specific fact pattern arise-- even if they do not own stock but each go into the market to buy \$50 million and then form Newco. I do not recall the basis for this conclusion. Is it 801.11(e), combined with the fact that there is no group concept for HSR Act purposes ?

[REDACTED]

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I think that you would reach the conclusion that the acquisition of shares of the Newco would be exempt under 802.4, only if in aggregate the shares contributed by the four parties constituted a minority interest in target. The subsequent acquisition of target by Newco would be non-reportable as well (assuming that none of the four parties control Newco), because all it will hold is cash for the acquisition and voting securities of the issuer to be acquired, both of which are excluded from Newco's size under 801.11(e).

BM
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