801.1 (c)

Verne, B. Michael

From: [redacted]
Sent: Tuesday, April 17, 2007 1:40 PM
To: Verne, B. Michael
Subject: Forward Contract

Mike,

This will confirm our discussion this morning that the hypothetical factual scenario set forth in an attachment to an email I sent to you yesterday does not give rise to a HSR reporting obligation at the time the agreement contemplated in the hypothetical is entered into by the IBK and its Investor customer. As set forth in the hypothetical, however, HSR must be cleared prior to the Investor taking physical delivery of the shares and/or being able to direct the voting of the shares.

If the above is inconsistent with your understanding of our conversation, please contact me as soon as possible.

Thank you,

[redacted]

Agree - This is OK. M. Bruno concurs
B Michael
4/17/07

[redacted] mail server made the following annotations on 04/17/07, 12:39:51:

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An investor (the "Investor") intends to enter into a forward sales contract (the "Forward") with an unaffiliated investment bank ("IBK") on the voting shares of the common stock of an unaffiliated public company (the "Issuer"). The Forward has been structured so that the Investor will bear the economic risk of any change in the price of the common stock of the Issuer over the term of the Forward. The Investor intends to file under the Hart-Scott-Rodino ("HSR") Antitrust Improvements Act of 1976, as amended (the "Act"), at approximately the same time that the Investor enters into the Forward. The Forward will have the following terms:

- The price specified in the Forward will equal the price of the common stock of the Issuer at the commencement of the Forward increased by commissions charged by the IBK and the cost of financing the holding of hedge shares by the IBK over the term of the Forward described below and decreased by any dividends paid of such shares.

- At the commencement date of the Forward, the value of the shares of common stock of the Issuer subject to delivery pursuant to the Forward will exceed $59.8 million but the number of shares held by the IBK as a hedge will not exceed 15% of the outstanding shares of the Issuer.

- The Forward will allow the Investor to elect either to physically settle the Forward, i.e., to take delivery of the shares of the underlying common stock, or to cash settle the transaction, i.e., to receive or pay the change in the value of the shares of underlying common stock on a specified date or at an earlier date elected by the Investor.

- If physical settlement is elected, the IBK will be obligated to deliver to the Investor the specified number of shares of common stock of the Issuer against payment by the Investor of the price per share specified in the Forward. Any such physical settlement will be subject to the condition that the Investor has made all filings required under the Act and the waiting period under the Act has expired or terminated.

- If cash settlement is elected by the Investor or the waiting period under the Act has not expired or been terminated by a date (or time period) specified in the Forward, the Forward will be cash settled. If the price of the common stock of the Issuer has increased, the IBK will pay the Investor the amount of the increase; if the price of the common stock of the Issuer has decreased, the Investor will pay the IBK the amount of the decrease. If cash settlement occurs, the current market price used to determine the amount to be paid will either be based on the price received by the IBK upon the sale of its hedge shares or an objective market price.

As an example, assume that the price per share of common stock specified in the Forward is $50. If physical settlement were to occur, then the Investor would pay $50 per share against delivery of a share upon settlement of the Forward. If cash settlement were to occur and the price per share of common stock at settlement were $40, then the Investor would owe the IBK $10 per share. Conversely, if cash settlement were to occur and the price per share of common stock at settlement were $55, then the IBK would owe the Investor $5 per share.

[redacted]

In order to hedge the risk to the IBK of movements in the price of the common stock of the Issuer, the IBK intends to purchase a number of shares of common stock of the Issuer equal to the number of shares under the Forward. The IBK and the Investor intend to approach an entity that currently holds in excess of 9% of the outstanding shares of common stock of the Issuer and the IBK will seek to purchase some or all of such shares as part of its hedge. The shares of common stock held by the IBK as a hedge to its exposure under the Forward will be held in the name of the IBK or in the name of a depository (such as DTC) for the account of the IBK. The shares will not be pledged to the Investor to secure the performance of the IBK under the Forward and the Investor will have no direct claim on the shares held by the IBK as a hedge in the case of a default or bankruptcy of the IBK. The Investor will have no rights in the shares held by the IBK as a hedge unless and until those shares are delivered to the Investor and therefore the Investor will have no right to direct the voting or disposition of those shares prior to any such delivery and the IBK will not accept any instruction as to the voting or disposition of those shares from the Investor.

For purposes of this hypothetical only, assume that the Investor holds a controlling interest in an entity that operates a business in the same line of business as the Issuer. After entering into the Forward, the Investor intends to contact the Issuer to discuss strategic options including the possibility that the Investor may seek to acquire all of or a controlling interest in the Issuer.

Verne, B. Michael

From: [redacted]
Sent: Tuesday, April 17, 2007 1:57 PM
To: Verne, B. Michael
Subject: FW: Forward Contract

Mike: This will further confirm that a similar put/call transaction is analyzed the same way and with the same result, notwithstanding: (1) that the agreement may include a recital to the effect that, for purposes of tax analysis, the Investor is the beneficial owner of the shares at the time the agreement is executed; and (2) that the IBK may purchase up to $59.8 million of the Issuer's shares from the Investor rather than in the market. Again, if I have misstated your advice, please let me know as soon as possible.

Thanks,
[redacted]

From: [redacted]
Sent: Tuesday, April 17, 2007 1:40 PM
To: 'Verne, B. Michael'
Subject: Forward Contract

Mike,

This will confirm our discussion this morning that the hypothetical factual scenario set forth in an attachment to an email I sent to you yesterday does not give rise to a HSR reporting obligation at the time the agreement contemplated in the hypothetical is entered into by the IBK and its Investor customer. As set forth in the hypothetical, however, HSR must be cleared prior to the Investor taking physical delivery of the shares and/or being able to direct the voting of the shares.

If the above is inconsistent with your understanding of our conversation, please contact me as soon as possible.

Thank you,

[redacted]

ok
4/17/07

[redacted] mail server made the following annotations on 04/17/07, 12:57:11:

IRS Circular 230 Disclosure: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication, including attachments, was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding any penalties that may be imposed on such taxpayer by the Internal Revenue Service. In addition, if any such tax advice is used or referred