801.10

Verne, B. Michael

From: [redacted]
Sent: Tuesday, October 23, 2007 2:52 PM
To: Verne, B. Michael
Subject: HSR question re § 801.10(a) analysis
Importance: High

Mike:

We would like to confirm with you that the following proposed transaction is nonreportable for the reasons indicated.

The proposed transaction is a merger in which Company A will acquire 100% of the voting securities of Company C. Specifically, Company A's wholly-owned subsidiary, Company B, will merge with and into Company C, with Company C surviving as a wholly-owned subsidiary of Company A.

The total merger consideration will be approximately $130 million. Among the major elements that make up this amount is an agreement by Company A to cause Company C immediately following the merger to pay off indebtedness of approximately $55 million owed by Company C under an existing credit agreement. Another significant component of the merger consideration consists of amounts to be allocated to the sole owner of Company C's non-voting preferred stock, a limited partnership that, together with its affiliates, also owns the majority of Company C's common stock. The limited partnership and its affiliates acquired the common stock several years ago in connection with their acquisition of control of Company C and the non-voting preferred stock the following year in exchange for cancellation of a subordinated promissory note given to the limited partnership in connection with an acquisition by Company C. Pursuant to the merger, and in accordance with the terms of the preferred stock set forth in Company C's constituent documents, each of the 8,933 shares of preferred stock outstanding immediately prior to the merger is to be allocated a sum equal to $1,000, plus accrued and unpaid dividends on the preferred stock. The current aggregate amount of accrued and unpaid dividends on the preferred stock is just under $20 million, so the total amount to be allocated to the preferred stock, including these unpaid dividends, will be just under $30 million.

It is our understanding that the amount that will be going to repay Company C's debt will not have to be taken into account in valuing the acquisition under § 801.10(a). Likewise, it is our understanding that the amount going to compensate the holder of the preferred stock for those shares, including the accrued and unpaid dividends, will not have to be considered for this purpose. Assuming that our understanding regarding the treatment of these two sizeable components of the merger consideration is correct, the acquisition will be valued for HSR Act purposes at an amount well below of the current size-of-transaction threshold of $59.8 million.

Is this analysis correct?

Should you need any additional information, please feel free to contact me by return e-mail or by phone at [redacted]

Thanks.

[redacted]

CORRECT
BM
10/24/07

[redacted] mail server made the following annotations on 10/23/07, 13:49:18:

IRS Circular 230 Disclosure: To comply with certain U.S. Treasury regulations, we in

11