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Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, January 22, 2008 10:31 AM
To: Verne, B. Michael
Subject: An odd transaction structure

Mike: I need your help on this one.

X and Y are corporations, each of which is its own ultimate parent.

X will merge into a newly created corporate subsidiary of Y, with X surviving as a wholly owned subsidiary of Y.

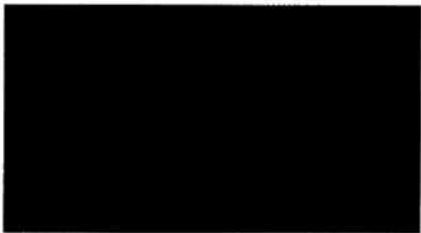
Shareholders of X will receive newly issued voting securities of Y (not shares of the sub).

In case it's relevant (I don't think it is), the original shareholders of Y will continue to hold more than 50% of Y's voting securities, but Y will remain the ultimate parent.

Here's the wrinkle. As a result of the transaction, X will have a contractual power initially to appoint seven of the thirteen directors of Y, but once the original designations have been made, the shareholders of Y will thereafter (i.e., in the next board election) be free to elect the directors of Y, with X having no continuing contractual power to appoint any directors.

My view is that the initial transaction involves an acquisition of Y by X (because of the contractual power), even though X will lose control (because it loses its contractual power) immediately after the initial designation of directors. At that point, Y will become its own ultimate parent.

Your thoughts?



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I think that the only acquisition is Y's acquisition of X through the merger. Receiving the contractual right to designate a majority of Y's directors does not constitute an acquisition by X. Y is the only person that will hold voting securities (of X) that it did not hold prior to the transactions, so Y is the only acquiring person.

BN
11/22/08