

801.2

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, April 23, 2008 4:12 PM
To: Verne, B. Michael
Subject: 803.2(a) and 801.2(a)

Mike:

I have a situation in which Newco, an LLC, is making an acquisition of 40% of the voting securities of X from Z, a shareholder of X that holds approximately 60% of X's outstanding shares. Preacquisition, Newco is controlled by Y. The consideration to be paid for the shares of X consists of 70% of the membership interests of Newco. Consequently, when the dust settles, Z will control Newco whose only holdings are 40% of the v/s of X. Y will no longer control Newco.

Under 801.2(a), an acquiring person is defined as a person who will hold assets or voting securities of another person as a result of an acquisition. Y is the preacquisition UPE but it is not an Acquiring Person per Section 801.2(a). Section 803.2(a) provides that the preacquisition UPE is required to file the notification but this is at odds with 801.2(a).

In this transaction, at the end of the day, Z controls Newco which only holds 40% of the v/s of X and Z still controls X by virtue of its control of Newco and its other holdings of shares of X.

Query whether any part of this transaction is HSR reportable assuming that the size of transaction test is met and no exemption applies.

One could take the view that Y, as the preacquisition UPE of Newco, is required to file for the acquisition of 40% of the v/s of X, but Y will not hold these shares as a result of the acquisition.

One could also take the view that Z is required to file for the acquisition of control of Newco. This it seems to me would be reportable assuming it is not exempt under 802.4.

[REDACTED]

[REDACTED]

< END >

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4/23/2008

I agree there is nothing reportable here. The only person that holds anything that it didn't hold prior to the transaction is Z (who holds 70% of Newco). The acquisition of Newco interests is exempt under 802.4.

Z does not, as a result of the transaction, hold any more voting securities of X than it did going into the transaction, so it would not be an acquiring person with respect to the indirect acquisition of the 40% of X that Newco holds.

BM
4/23/08