802.4

Verne, B. Michael

From: [redacted]
Sent: Monday, June 23, 2008 3:10 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: FW: Materials for 3:00 Eastern Conference Call
Attachments: HSR transaction outline.DOC; Organization Chart.DOC

Mike:

Both [redacted] and I appreciate your taking time to speak to us this afternoon about the transaction described in the attached outline.

As we discussed, we understand that the transaction described is exempt from the HSR Act reporting requirements pursuant to 16 C.F.R. §§ 802.1, 802.4 and 802.30.

For HSR purposes, A and B each control JV1 LLC as each has a right to 50% of its profits and 50% of its assets upon dissolution. Accordingly, any assets that A or B would hold as a result of the separation/division of JV1 LLC would be exempt from the HSR Act reporting requirements.

For HSR purposes, A and B each control JV2 LLC and its "controlled" entities. That is the case because, in accordance with Example 4 under 16 C.F.R. § 801.1(b), A is deemed to hold 55.6952% of JV2 LLC and its controlled entities (15.5387 + 0.2108 + 39.9457) and B is deemed to hold approximately 84.2505% of JV2 LLC and its controlled entities (29.3818 + 14.9230 + 39.9457). This is the case since A and B are each deemed to hold the 39.9457% interest in JV2 LLC held by JV1 LLC. Accordingly, any assets that A or B would hold as a result of the separation/division of JV2 LLC and its controlled entities would be exempt from the HSR Act reporting requirements.

The exemption in 802.30 applies even though A owns (directly and indirectly) approximately 49% of the economic value in JV2 LLC and its subsidiaries, while B owns 51%. These economic value percentages are calculated as follows:

A's ownership:
15.5387% + 0.2108% + (.5 x 39.9457%) + (.451901 x .998511 x 29.3818%) = approx. 49%

B's ownership:
14.9230% + (.5 x 39.9457%) + (.548099 x .998511 x 29.3818%) = approx. 51%

To the extent that 802.30 does not apply to (i) assets transferred from JV2 LLC through B3 Corp. to A and (ii) employees transferred from B6 LLC to A (because A does not control B3 Corp. or B6 LLC for HSR purposes), this transaction would still be exempt because:

(a) the various types of contracts and related assets are regularly sold in the ordinary course of business, making this an ordinary course transaction exempt pursuant to 16 C.F.R. § 802.1 (and § 802.4). Interpretations 7 and 8 of the Premerger Notification Practice Manual make clear that § 802.1 can apply here because, even if the transaction could be viewed as the sale of the business, B will remain in the same business. The fact that B will no longer conduct business through ISOs or through bank agency contracts should not affect this result, as these are only two types of referral networks for reaching customers and do not constitute the exit of a business;

(b) Interpretation 105 of the Premerger Notification Practice Manual makes clear that the assumption of various employment agreements for future services is excluded for HSR purposes, although in this case, to the extent that A assumes any liabilities relating to the past employment of those employees, A would need to confirm that this amount is valued at under $63.1 million;

(c) the non-exclusive IP rights are exempt as they are not an asset for purposes of the HSR Act because the rights are not exclusive; and

(d) cash and cash equivalents are not reportable pursuant to 16 CFR § 801.21 and 15 U.S.C. § 18a(c)(2).

Please let us know if the foregoing does not accurately describe our conversation. Again, thank you as always for your guidance.

Regards,

[redacted]

Agree
BM 6/24/08

[redacted]

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For purposes of discussion, assume that the size of person and size of transaction tests are met.

A and B are members of a joint venture that has been implemented through a series of LLCs, partnerships and corporations. The current structure of the joint venture is attached (excluding wholly-owned entities of JV2 LLC).

The joint venture is a global payments firm that provides: (a) payment processing for credit cards, debit cards, fleet cards, stored value cards (gift, pre-paid, employee); (b) web-based payment support through its proprietary payment gateway and virtual terminal; (c) a turnkey gift card program; (d) multi-currency processing for U.S. and Canadian-based merchants, including dynamic currency conversion and cross currency support; (e) electronic check processing, including point of purchase (POP) check processing and accounts receivable check (ARC) processing; (f) alternative payments support, including PayPal, Bill Me Later, private label cards and other payment methods; (g) Level II and Level III Purchasing Card support; (h) debit bill payment for select industries; and (i) online reporting, transaction history search and chargeback management tools. The joint venture obtains business both directly and through referral networks, including Independent Sales Organizations (ISOs) (third-parties that partner with acquiring banks to find, open, and manage merchant accounts on behalf of such businesses in exchange for a higher fee, or for a percentage of the merchants' sales).

The parties have elected to divide the joint venture. To effectuate the division/separation, through a series of transactions, A will be deemed to acquire from the joint venture 49% of its assets, net of liabilities, and A will surrender its interest in the joint venture, resulting in B holding 100% of the interests in the joint venture, which will at that time hold 51% of the joint venture's assets, net of liabilities.

The various categories of assets that A will be deemed to acquire include:

- merchant contracts and associated settlement assets and liabilities (i.e. receivables from card associations and payables to merchants);
- bank agency contracts;
- referral contracts;
- assets specifically relating to the foregoing contracts, including merchant collateral, books and records;
- non-exclusive IP rights, which rights include software, trade secrets, trademarks, patent rights and copyrights;
- 49% of an interest in a third party; however the fair market value of this interest is less than $63.1 million;

- employees relating to the various contracts being acquired, as well as a portion of the joint venture's sales force;

- all merchant acquiring relationships of the ISOs along with the personnel and assets used by the joint venture to manage and conduct this part of the business;

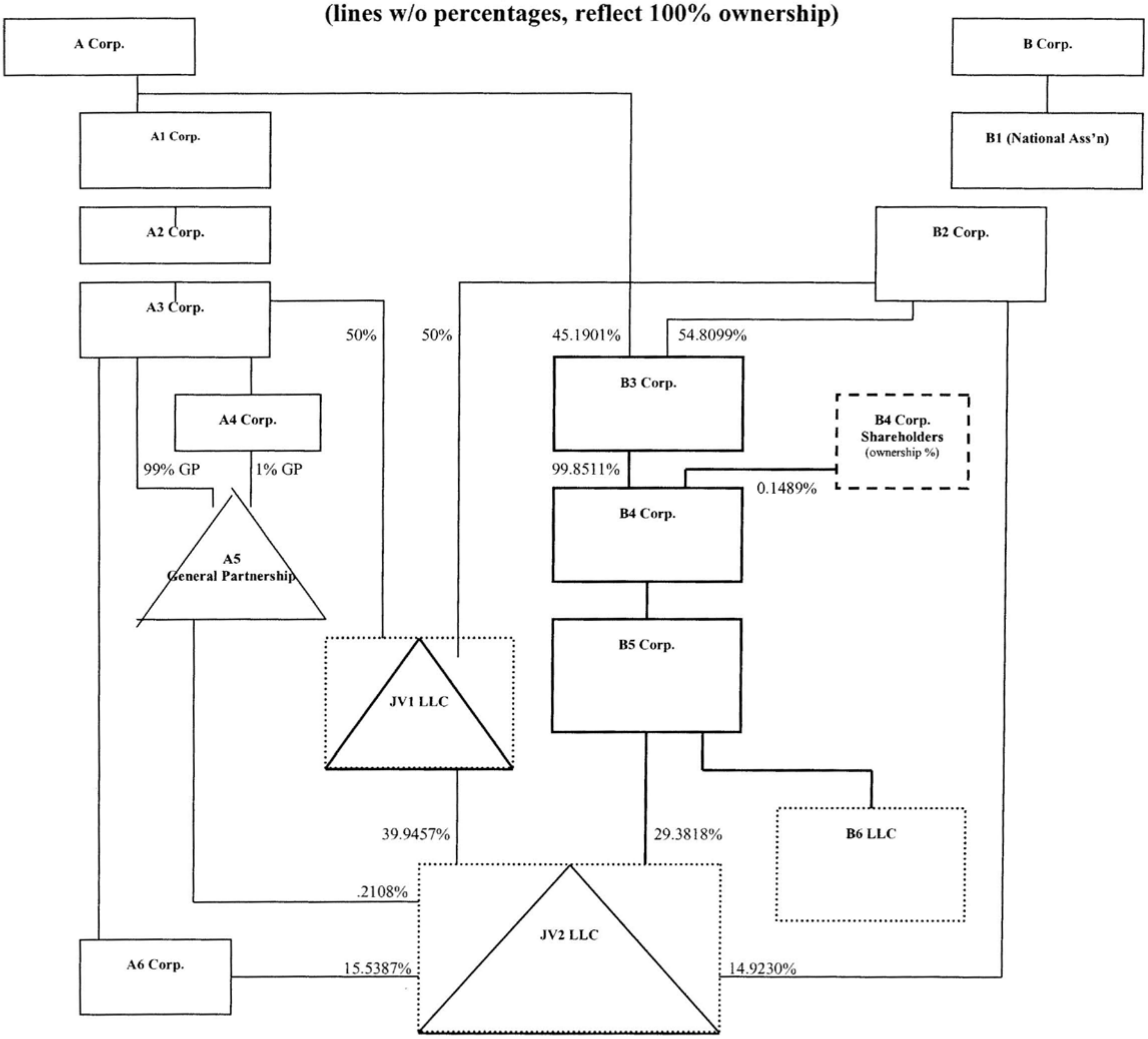
- all bank agency contracts of the joint venture and the personnel and assets used by the joint venture to manage and conduct this part of the business; and

- cash and cash equivalents and, to the extent agreed by A and B, other assets and liabilities of the joint venture (currently expected to be certain receivables and payables but also could include yet to be defined assets, which solely for HSR analysis, to the extent they are not cash or cash equivalents would have a fair market value under $63.1 million) so that A holds 49% of the total assets of the joint venture, net of liabilities and B holds 51% of the total assets of the joint venture, net of liabilities.

B will retain the same various categories of assets that are being transferred to A, except that B will not retain any ISO or bank agency contracts, although it will continue to reach many of the same customers through its direct sales force. The services provided by both A and B are identical whether the customer has been obtained directly or through a referral network, including the ISO business.

[redacted]

Organizational Chart
(lines w/o percentages, reflect 100% ownership)



Corporation

Partnership (P/S)

LLC treated as a P/S for federal income tax purposes

LLC disregarded for federal income tax purposes

[redacted]