

802-30
802.9**Verne, B. Michael**

From: [REDACTED]
Sent: Wednesday, January 28, 2009 10:03 PM
To: Verne, B. Michael
Subject: HSR Threshold/Exemption Analysis

Hi Mike,

I have an HSR reporting analysis I'd like your guidance on. The transaction involves the acquisition of LLC interests for cash and voting securities so there are potentially two reportable transactions, (1) the acquisition by Company A of LLC interests of Target from Company B for cash and Company A common stock (the "LLC Acquisition") and (2) the acquisition by Company B of Company A common stock pursuant to § 801.2(e) (the "Stock Acquisition"). The LLC Acquisition is not reportable and the Stock Acquisition is probably exempt, as follows:

LLC Acquisition

Company A is its own ultimate parent entity. Company B is a subsidiary of or controlled by Company C which is its own ultimate parent entity. Both Company A and Company C have total assets or annual net sales in excess of \$130.3 million so the size-of-parties threshold is met. Company A already holds Target LLC interests that give Company A the right to 50% or more of the profits of Target or the right to 50% or more of Target's assets upon dissolution. HSR filings were made by the parties and the waiting period has expired for Company A's acquisition of a controlling interest in Target.

In the LLC Acquisition, Company A will acquire the remaining LLC interests of Target from Company B and the other Target LLC members for cash and Company A common stock for total consideration of \$165 - \$250 million. Even though the consideration to be paid to Company B for its Target LLC interests exceeds the \$63.1/65.2 million size-of-transaction threshold, Company A's acquisition of the remaining LLC interests of Target is not reportable since Company A has already filed for its acquisition of a controlling interest in Target and thus this is an exempt intraperson transaction pursuant to § 802.30(a).

Please let me know if you do not agree.

Stock Acquisition

The consideration to be paid by Company A to Company B and the other holders of Target LLC interests will be paid in cash and Company A common stock ("A Stock") in a series of payments over a period of a year or so consisting of (a) an initial payment of a fixed number of A Stock and cash (the "Initial Payment"), and (b) up to 10 deferred payments to be paid in cash, A Stock or a combination of cash and stock, at Company A's option (the "Deferred Payments"). Company B is the only holder of Target LLC interests to be acquired whose holdings are sufficiently large to possibly receive A Stock having a value in excess of the size-of-transaction threshold.

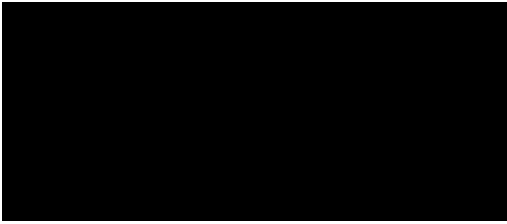
The Initial Payment to Company B will be less than \$63.1 million, however, the aggregate total value of A Stock received by Company B in the Initial Payment and the Deferred Payments could exceed \$63.1/65.2 million, depending on what amount of the Deferred Payments Company A decides to pay in A Stock. The agreement between Company A and Company B provides that Company A's election to make any Deferred Payment in whole or in part in A Stock is limited such that Company B's ownership of A Stock as a result of the Deferred Payment cannot exceed 9.9% of the A Stock then outstanding. It is expected that Company B will likely not hold any A Stock it receives for any length of time and may in fact have sold all it holds between Deferred Payments. Company B is not planning to participate in the formulation, determination or direction of the basic business decisions of Company A. Assuming that Company B will not hold greater than 9.9% of the issued and outstanding voting securities of Company A as a result of any Deferred Payment and that Company B is not planning to influence or participate in the management of Company A, it appears Company B's acquisition of A Stock is exempt under § 802.9 as an acquisition solely for the purpose of investment.

1/29/2009

8

Please let me know if you do not agree. Also, if by some turn of events the criteria of § 802.9 are not met, I wanted to confirm that it is appropriate to do the HSR threshold analysis at the time of each Deferred Payment since it is unknown at the time of closing what portion, if any, of the Deferred Payments will be made in A Stock.

Please feel free to give me a call if it would be easier to discuss real time. Thanks for your help! Betsy



AGREE
B
1/29/09

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