

Ferkingstad, James H.

From: [REDACTED]
Sent: Thursday, September 17, 2009 5:32 PM
To: Ferkingstad, James H.
Cc: [REDACTED]
Subject: HSR Applicability Analysis

§802.4
Agree
JAF

Dear Mr. Ferkingstad:

Thank you for taking the time this afternoon to discuss whether the transactions described below are reportable under the HSR Act.

The proposed transaction:

Corporation A is a Special Purchase Acquisition Company, which is a newly formed blank check company that went public in 2007 and raised cash for the purpose of effecting a business combination with an operating business. Corporation A currently holds only cash. Under a proposed merger agreement among Corporation A (its own ultimate parent entity), Corporation B (a wholly-owned subsidiary of Corporation A) and Corporation C (an entity included with Person D), Corporation B will merge with and into Corporation C, with Corporation C continuing as the surviving corporation and a wholly-owned subsidiary of Corporation A. Upon consummation of the merger, each of Corporation A and Corporation C will hold the assets that it held pre-merger.

Person D is the ultimate parent entity of Corporation C, and as a result of the proposed merger will receive more than 50% of the voting securities of Corporation A post-merger. Therefore, as a result of the merger, Person D will acquire control of Corporation A.

Given that the merger of Corporation B and Corporation C and the acquisition of voting securities of Corporation A by Person D occur simultaneously, the two transactions should be viewed as a single acquisition in which Person D acquires more than 50% of the voting securities of Corporation A. Therefore, Person D is the only acquiring person in the transaction.

Corporation A currently holds only cash, and cash is considered to be exempt assets under §801.21. Given that the acquisition of voting securities of Corporation A by Person D is exempt under §802.4 (as the newly acquired assets of Corporation A will consist of assets (i.e., cash)), Person D's acquisition of the voting securities of Corporation A is exempt from the requirements of the HSR Act.

Please confirm whether our analysis is correct. Thank you for your assistance in this matter.