

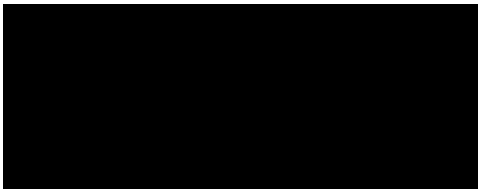
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Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, October 13, 2009 7:28 AM
To: Verne, B. Michael
Subject: FW: Hypothetical and Analysis
Attachments: Document.pdf

Dear Mike:

This is a follow-up to an e-mail from last week as the facts have changed. There is no need to refer to the earlier message as it is now moot.



Hypothetical Transaction:

Today: As noted in the attached diagram, Investor X owns 29% of membership interests in U.S. LLC A and the Multiple Investors collectively own 71% membership interests in U.S. LLC A. The investors or their affiliates also own promissory notes issued by U.S. LLC A on a pro rata basis in accordance with the investors' membership interests ownership in U.S. LLC A.

Step 1: U.S. Corp. B re-classifies its capital stock as Class A common stock and Class B common stock; both will be owned by U.S. LLC A.

Step 2: Multiple Investors and their affiliates that hold promissory notes issued by U.S. LLC A will deliver their promissory notes to U.S. LLC A for cancellation. In addition, Multiple Investors will exchange their membership interests in U.S. LLC A for Class B common stock in U.S. Corp. B. Immediately after such cancellation and exchange, Multiple Investors, as holders of Class B common stock in U.S. Corp. B, will contribute approximately \$175 million in total to U.S. Corp. B as additional capital contributions. As a result of this exchange, Investor X will hold 100% of U.S. LLC A—whose sole asset will be its holding of 29% of the voting securities of U.S. Corp. B.

Step 3: Simultaneously with Step 2, Investor X will pay approximately \$70 million to purchase additional membership interests in U.S. LLC A and U.S. LLC A, as the holder of Class A common stock in U.S. Corp. B, will use such \$70 million to make additional capital contribution to U.S. Corp. B.

Step 4: As a result of the above transactions, U.S. LLC A will own 29% of the common stock of U.S. Corp. B (diluted from 100%), and the Multiple Investors collectively will own 71% of the common stock of U.S. Corp. B. This is the exact ownership percentage held today in U.S. LLC A by Investor X and the Multiple Investors. The only difference is that Investor X will indirectly (through U.S. LLC A) own the 29% common stock in U.S. Corp. B.

Promissory Notes: The promissory notes are owned today by the investors or their affiliates but will be delivered to U.S. LLC A for cancellation, except for the promissory note owned by Investor X's affiliate, which will remain

outstanding.

Analysis:

Step 1: This is simply a reclassification of stock by a wholly-owned entity. No HSR Act issue.

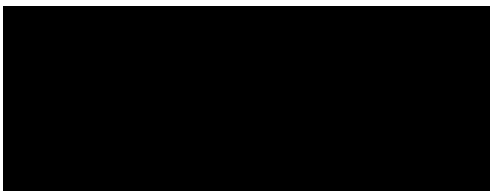
Step 2: The cancellation of promissory notes is not subject to the HSR Act. The exchange of LLC interests for common stock in Corp B raises two potential issues.

First, as a result of this exchange by the Multiple Investors, Investor X's direct interest in U.S. LLC A will increase from 29% to 100%. However, the sole asset of U.S. LLC A is its holding in U.S. Corp B, now reduced from 100% to 29%. Thus even if one were to view Investor X as instrumental in causing this increase in its ownership to occur, Rule 802.4 would exempt its "acquisition" of 100% of U.S. LLC A as the sole asset of U.S. LLC A is its 29% stock interest in Corp B.

Second, the acquisition of common stock in U.S. Corp B by the Multiple Investors will result in several Investors holding voting securities of U.S. Corp B valued in excess of \$65.2 million. Moreover, Investor X's secondary acquisition of the 29% interest held in U.S. Corp B by U.S. LLC A could be reportable as its value will exceed \$65.2 million. However, both of these "acquisitions" should be exempt under the approach outlined in Interpretation 19 of the Premerger Notification Practice Manual. This transaction essentially is identical to the spin-off of a wholly-owned subsidiary to the shareholders of the parent—in this case U.S. LLC A—discussed in Interpretation 19. The only difference is that, in this case, the parent—U.S. LLC A, instead of distributing a 29% interest in U.S. Corp B to Investor X, will retain a 29% interest in its formerly wholly-owned subsidiary while the remaining 71% interests are distributed pro-rata to the Multiple Investors who will own exactly the same percentage of U.S. Corp B that they previously held in U.S. LLC A. And Investor X instead of holding 29% of U.S. LLC A-- whose only asset was its 100% ownership of U.S. Corp B—will now hold 100% of U.S. LLC A which, in turn, will hold the 29% interest directly in U.S. Corp B. In other words, Investor X's ownership really has not changed at all, it is just held through slightly different means. This seems clearly to fall within the approach adopted in Interpretation 19 and the entire transaction, including the secondary acquisition by Investor X, should be exempt.

The additional capital contributions by the Multiple Investors in U.S. Corp B is not subject to the HSR Act as these contributions do not involve any "acquisition" of voting securities or assets by the Multiple Investors.

Step 3: The acquisition of additional membership interests in U.S. LLC A by Investor X is exempt as X already holds 100% of U.S. LLC A. The capital contribution by U.S. LLC A to U.S. Corp B is not subject to the HSR Act as it does not involve an "acquisition" of assets or voting securities.

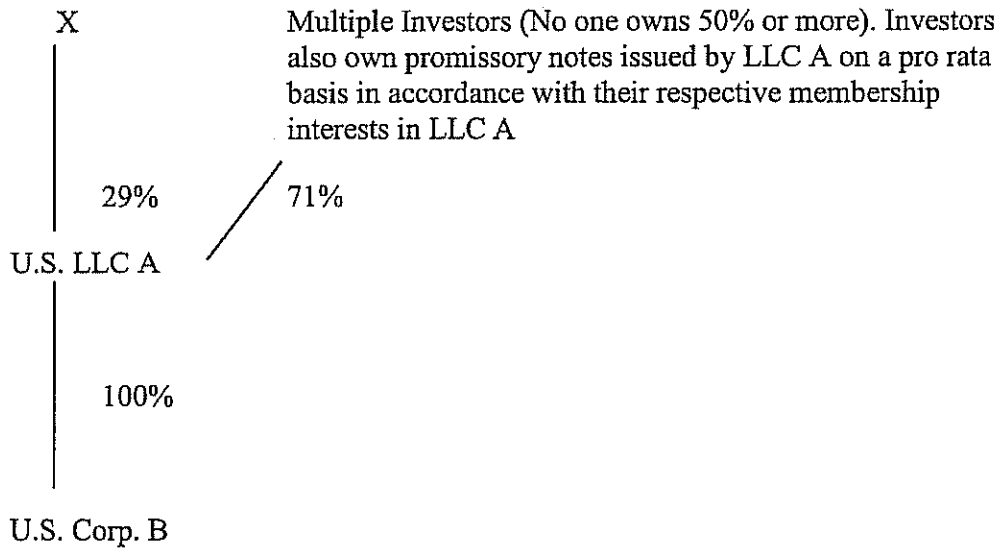


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Hypothetical

1. Situation today



2. Post Transaction

