

802.4
802.30

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, June 29, 2010 8:09 PM
To: Verne, B. Michael
Subject: 7A(c)(10) and 802.30 Issue

Mike,

I am writing to seek your view on the applicability of the HSR Act to the following transaction:

Company A is a publicly traded special purpose acquisition company (SPAC) and its only assets consist only of cash, cash equivalents and US treasuries. Company A is not newly-formed and has regularly prepared financial statements. It is its own ultimate parent entity (UPE) and Funds X, Y and Z each own approximately 20% of the voting securities of Company A.

Company B is a publicly traded company with substantial operating assets. Funds X, Y and Z own respectively, approximately 51%, 10% and 4% of the voting securities of Company B.

Funds X, Y and Z plan to contribute their shares of Company B to Company A in exchange for shares of Company A. As a result, X, Y and Z will own respectively approximately 70%, 16% and 8% of the voting securities of Company A.

My analysis of the transaction is as follows:

1. Fund X's acquisition of voting securities of Company A is exempt under Rule 802.4 because the assets of Company A, following its acquisition of more than 50% of the shares of Company B, will consist only of assets the acquisition of which would be exempt under Rule 801.21 (cash, cash equivalents and treasuries) and Rule 802.30 (assets of Company B which is already controlled by Fund X).
2. Funds Y and Z's acquisitions of voting securities of Company A are exempt under Section 7A(c)(10) because Y and Z's percentages of the voting securities of Company A will decrease as a result of the transaction.
3. Finally, is Company A's acquisition of control of Company B exempt under Rule 802.30 since Fund X is both the acquired person (as the UPE of Company B) and the post-acquisition UPE of Company A, even though Fund X is not the pre-acquisition UPE of Company A?

Many thanks for your help.

Best regards,

[REDACTED]

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6/30/2010

- 1) Agree
- 2) Agree
- 3) No – A's acquisition of B is not exempt because you look at 802.30 going into the transaction. X is an acquired person at that point, but not an acquiring person because A is its own UPE.

Bjw
6/30/10