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Verne, B. Michael

From: [REDACTED]
Sent: Monday, November 08, 2010 11:43 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Pro Rata Exemption

Dear Mike, we hope all is well. We wanted to get your views on the fact pattern presented below.

Company A and B are making a series of investments in Company C, a public US company, on equal terms. Each closing subsequent to the initial investment is conditioned on various external milestones and approvals outside the direct control of Companies A and B, but some of which may be waived by the companies. For each investment, A and B will acquire a newly created series of preferred stock ("Preferred Stock") of C. In addition, each of A and B, as holders of Preferred Stock, will receive quarterly dividends in the form of additional Preferred Stock issued by C.

The Preferred Stock is a voting security because the holders of the Preferred Stock, voting as a class, have the right to appoint two directors of C (out of a total of 10 directors). (The holders of Preferred Stock also have voting rights with respect to certain other matters, such as changes to the rights of the Preferred Stock.) As each of A and B have an equal number of Preferred Stock, each will appoint one director.

The first closing occurred earlier this year and each of A and B acquired, for cash, less than \$63.4 million in Preferred Stock, and therefore that transaction was not reportable. As a result of that investment, each of A and B held (determined an accordance with Section 801.12(b) of the HSR rules) 10% of the voting securities of C (that is, the right to appoint 1 of 10 directors). As a result of the second closing and the dividends of Preferred Stock issued, each of A and B will hold Preferred Stock valued at more than \$63.4 million. There is also a third closing anticipated which will in turn result in A and B holding Preferred Stock likely valued at a greater level than after the second closing. However, at all times the percentage ownership in C will not change, that is, each of A and B will still only be able to appoint, as a class, 2 of the 10 directors of C, and each of A and B will hold an equal number of Preferred Stock. We do note that A and B, as a result of the acquisition of additional Preferred Stock will also have increased economic rights relative to the shareholders of the other classes of stock as a result of the additional investments. The consideration for the additional shares will be cash only.

We wanted to confirm that, so long as there is no increase in the pro rata share ownership of A and B as a result of additional Preferred Stock acquired in the subsequent closings (and through the Preferred Stock dividends), that, pursuant to Section 7(c)(10) of the HSR Act (and notwithstanding Section 802.10 of the HSR regulations), no HSR filing will be required for the subsequent investments of A and B.

Please let us know if you agree with this analysis.

Regards,

AC 22
BM
11/12/10

[REDACTED]