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Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, May 24, 2011 1:50 PM
To: Verne, B. Michael
Subject: HSR reportability of transaction structure

Mike,

Can you address the HSR Act implications of the following scenario?

1. Newly formed LLC X will acquire newly issued shares of Convertible Preferred Stock (the "Preferred Stock") of Company Y for a purchase price of \$200 million. The Preferred Stock has the present right to vote for directors of Company Y on an "as converted" basis.
2. LLC X will fail the size-of-person test at closing.
3. The Preferred Stock may accrue a dividend (and certainly will accrue the dividend in the near future), payable on a quarterly basis, that increases, indirectly, the number of Common Shares into which the Preferred Stock may be converted. Because the Preferred Stock votes on an "as converted" basis, this results in an increase in the Preferred Stock's present voting percentage in Company Y, but without the actual number of Preferred Stock shares held increasing. (The relevant dividend increases the stated "Purchase Price" of the Preferred Stock, which, in turn, determines the number of Company Y Common Shares that the Preferred Stock may be converted into. Although there will be an increase in the "Purchase Price", no additional consideration is paid to Company Y by the Preferred Stock shareholders with respect to the dividend.)

Would the payment of the dividend be considered an "acquisition" under the HSR Act, requiring an analysis of whether an HSR Act filing is required prior to each payment of the dividend?

Thanks for your time.

Regards,

[REDACTED]

[REDACTED]

[REDACTED]

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We think the dividends are acquisitions and each would have to be analyzed as to HSR reportability before the dividend is issued.

BW
5/25/11