

801.2(d)

From: [Redacted]  
To: FTC.SERIOUS@ftc.gov  
Date: Mon, Sep 18, 2000 6:14 PM  
Subject: Technical 1(b)(1)(c) Questions on Reverse Triangular Merger

Mike:

Welcome back. A technical HSR question on the form itself re the distinction between "being" an acquired person in a transaction for 1(b)

(2) A2. A2 is merged into B (which is designated as the survivor) but A2 is not 100% owned by B, but at the same time all the shares of B are acquired

50% but less than 100% of A2, which includes all of what formerly was B. Unknown and unknowable former shareholders of B (which is public before the deal) may end up with more than \$15 million of shares of A2 as a result of the deal, but all will be under 10% and A believes that all such shareholders would qualify for the investment only exemption.

even though B is technically the survivor, what was B company is now

2. Since shareholders of B will acquire shares of newly created A2, an entity controlled by A, isn't A technically still an acquiring person and the unknown shareholder of former B technically an acquiring persons? I don't see anything in 801.2(d) to mandate a different result, but it my impression that a number of our colleagues in the HSR Bar would not treat A as an acquired person in this context. It is not clear to me how they reach that result.

← YES

3. If A is correctly thought of as both acquiring and acquired, shouldn't A check the box "both" in Item 1(b) indicating that it is both an acquiring and an acquired person, even though it is

NO - (MAYBE BOTH) IS REPEALABLE.

4. In 1(c), should A be listed as both an acquiring and acquired person? The instructions say list each acquiring and

THE LANGUAGE OF THE INSTRUCTIONS

person, however, so long as A is not listing as an acquired person in a reportable acquisition.

COATION OF THE TERMINOLOGY NEED BE PROVIDED IN THE FORM.

My concern is that if we check the box "both" in 1(b)

someone in Premerger might accidentally bounce the filing for not responding separately to Items 5-9 as an acquired person.

Do NOT indicate "both"

5. Since A does not know the identity of all former B shareholders who will end up holding stock of A2, is it appropriate to simply cross reference Item 2(a) in the 1(c) listing of all acquiring persons?

NO NEED TO

I would appreciate it if you could give me a call

always, I appreciate your insight.

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SEE NOTES ABOVE.

B. Michaelson

8/18/00