

802.1(c)

From: [REDACTED]
To: 'mvenie@ic.doe.gov'; shwvme@ic.doe.gov
Date: Thu, Oct 12, 2000 1:47 PM
Subject: FW: HSR interpretation

ADVISED THE WRITER THAT
IN A MERGER, B
WOULD FILE ONLY WITH
RESPECT TO ITS OPERATIONS
AND WOULD NOT INCLUDE
A.

B. Michael Venie
10/13/00

One last follow-up. The parties have restructured the transaction so that now A will be merged with and into B. Since neither A nor B is a \$100 person, there is no filing obligation for the underlying merger. Z, a shareholder of A will get in excess of \$15 million of B's shares as a consequence of the merger. Z is a \$100 million person and will have a board seat in the merged company. Another shareholder X, holds shares of both A and B, and as a consequence of the Merger will hold shares of B valued in excess of \$15 million. (Premerger X's shares of B were worth about \$3 million) Shareholder X is also a \$100 million person and will have a board seat in the merged company.

If thus appears that both X and Z will be required to file as acquiring persons and B will file as the acquired person. As discussed on Tuesday, if this were a consolidation, B's filing would need to include information from both A and B. Is the rationale the same even though this is now structured as a merger?

(**There will be no filing for the underlying merger**)

> Subject: [REDACTED] FW: HSR interpretation

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- > Thanks for your response. As a follow-up, it appears that shareholders of
- > both A and B will have a filing obligation as they will acquire in excess
- > of \$15 million of C's voting securities, and will not be able to take
- > advantage of the investment only exemption. Would C have to file as an
- > acquired person (since 802.41 would not be applicable) and if so how would
- > that work since it is not yet in existence? Thanks

> -----Original Message-----
> From: [REDACTED]
> Sent: Monday, October 09, 2000 11:23 AM
> To: 'mvenie@ic.doe.gov'; [REDACTED]
> Cc: [REDACTED]
> Subject: HSR interpretation

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- >
- > Hi Mike - I would appreciate your guidance on the following fact pattern:
- >
- > Facts: A and B wish to engage in a business combination. A will be
- > merged with and into B and shareholders of A and B will be given shares of
- > C - the consolidated entity. Neither A nor B are \$100 million persons, but

> Issue: I believe there would be no filing obligation for the
> consolidation as there is no \$100 person. Assuming however, that
> shareholders of Asset P are \$10 million persons, and the investment only

> Thanks.

>

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