

801.10

From: [REDACTED]
To: "mike verne" <mverne@tc.gov>
Date: 6/25/02 1:01PM
Subject: Filing fee question

Hi Mike. I have my first deal that threatens to straddle a filing fee bridge and I need your help.

A subsidiary of Company A will merge with Company B. The shareholders of Company B will receive \$3 cash consideration for each share of Company B stock. Based on the current number of shares outstanding, the purchase price is exactly \$99,937,310. If a sufficient number of options to acquire Company B stock are exercised prior to consummation, the purchase price could hit or exceed \$100 million. FYI - the acquiring person is not now aware that any option holder intends to exercise prior to consummation. Can the acquiring person rely on the number of shares outstanding on the date that it makes its HSR filing?

Thanks,

[REDACTED]

ADVISED THAT IF THERE IS NO
REASONABLE BASIS FOR ESTIMATING THE NUMBER
OF ~~SHARES~~ OPTIONS THAT WILL BE EXERCISED,
THE ACQUISITION PRICE IS UNDETERMINED &
THE VALUE IS THE FAIR MARKET VALUE.
N. OVUKA CONCURS.

B. Mueller
6/26/02