801.10

Verne, B. Michael

From: [redacted]
Sent: Wednesday, March 03, 2004 12:02 AM
To: Verne, B. Michael
Subject: Valuation Question

Dear Mike,

I have a question regarding valuation of voting securities. My client is an investment fund . One of its portfolio companies ("Target 1") is undertaking a recapitalization. Currently, my client has 1/2 of Target 1's board seats, but only because there are a number of temporarily empty board seats. My client does not hold 50% of the voting stock of Target 1.

Pursuant to the recapitalization plan, each issued and outstanding share of Class A Common Stock, Class B Common Stock, Class C Non-Voting Common Stock and Common Stock will undergo a 1-for-10 reverse stock split whereby each outstanding share of each class of capital stock will be converted into 1/10 of a share of such class of capital stock. In addition, each issued and outstanding share of Class A Common Stock and Class B Common Stock will automatically be exchanged for 12.52 shares of Common Stock.

In November 2003, Target 1's board retained an independent firm to conduct a valuation of Target 1 in connection with the process leading to the recap. Shortly after this valuation was completed, Target 1 acquired another company ("Target 2"). Target 1's board proceeded with the recap process based on the November 2003 valuation because Target 1's board concluded that the acquisition of Target 2 was dilutive (in the short term). Target 1's board determined that the cost of the Target 2 transaction, including debt, diminished the value of Target 1's shares.

Based on the November 2003 independent valuation, the shares my client will hold as a result of the recap will have a value less than $50 million. Target 1 board's final resolution authorizing the recap will include a paragraph reaffirming its assessment that the value of Target 1 is less than the November 2003 valuation. There seem to me to be 2 potential issues regarding the valuation -- (1) the valuation was originally done more than 60 days before the recap becomes effective and (2) although my client currently has 1/2 the board seats of Target 1, the valuation was not done by the Acquiring (my client). It seems to me that one could argue that the valuation at issue here satisfies the HSR regulations because the date of the board resolution authorizing the recap and reaffirming the valuation is done within 60 days of closing and if my client did not agree with the valuation its representatives on the Target 1 board would not have agreed to the valuation.

I'd appreciate your thoughts on this issue.

Regards,

[redacted]

AGREE THAT NOVEMBER VALUATION CAN BE USED AS LONG AS IT IS VALIDATED BY THE BOARD WITHIN 60 DAYS OF THE RECAPITALIZATION.

B. Michael Verne
3/3/04

Verne, B. Michael

From: [redacted]
Sent: Wednesday, March 03, 2004 12:14 AM
To: Verne, B. Michael
Subject: Valuation Question Plus

Mike,

I should have also said that my client is not paying anything for the additional shares of stock it will be receiving as a result of the recap.

[redacted]