801.10

Verne, B. Michael

From: [redacted]
Sent: Tuesday, May 17, 2005 10:51 AM
To: Verne, B. Michael
Cc: [redacted]
Subject: Pre-Merger Valuation Question

Mr. Verne,

Thanks for all of your assistance in the past. Can you please confirm the following asset valuation question in this hypothetical?

Company A has a wholly-owned subsidiary, Company X, that intends to acquire substantially all of the assets/liabilities of Company B for $35M. Many of the owners of Company B may become employees of Company X post-closing (Note: The value of bona-fide employment contracts are not included in the valuation because they are not consideration being paid to the seller). Company X will continue as a wholly-owned subsidiary of Company A after the closing.

As part of the Purchase Agreement, Company A will covenant to invest an additional $20M in its subsidiary, Company X, for the development of the infrastructure of Company X (ie, acquisition of equipment and build-out of facilities, not earmarked toward salaries) over a certain time period post-closing. While neither Company B, nor its owners, will directly benefit from the future $20M investment by Company A in its subsidiary, Company X, they will have a covenant/right that they could seek to enforce under the Purchase Agreement if Company A does not make such future investment.

Because neither Company B directly, nor its owners, will "receive" any consideration because of the $20M future investment in Company X, this amount is not considered when determining the fair market value of the transaction. (Note: I have assumed that the value of the "right" received to enforce this future covenant is worth significantly less than the proposed investment amount in Company X.) Consequently, the transaction value is only $35M and no HSR filing is required.

Please do not hesitate to call me at the number below if I can provide additional information or if you have any questions. Thanks for your assistance.

[redacted]

AGREE-
B Michael
5/17/05

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