Verne, B. Michael

From: [redacted]
Sent: Tuesday, July 19, 2005 5:03 PM
To: Verne, B. Michael
Subject: Merger with Voting/Non-voting Stock

[redacted] Hi Mike,

I am writing to you with a question about a merger. The target has about 3,000 shares of Class A Voting Common Stock and 2,000,000 shares of Class B Nonvoting Common Stock. The Class B Nonvoting Common Stock is not convertible into Class A Voting Common Stock (nor into voting stock of any kind), and does not currently entitle its holders to vote for directors. There are also some Options to purchase shares of the Class B Nonvoting Common Stock.

The aggregate purchase price for the target is approximately $73 million. The purchase price to be paid, at the effective time of the merger, for each share of Class A Voting Common Stock and Class B Nonvoting Common Stock will be the same. The Options to purchase shares of the Class B Nonvoting Common Stock will also be cashed out at the time of the merger.

The aggregate consideration to be paid to the holders of the Class A Voting Common Stock will be slightly more than $100,000 but well below the size of transaction threshold.

The attached informal interpretation seems to indicate that the parties should expressly allocate the purchase price consideration in the agreement between the parties. I want to make sure that this interpretation is still the Premerger Notification Office's position, and that if the Agreement and Plan of Merger were to include a provision stating the value of the purchase price to be paid to the holders of shares of Class A Voting Common Stock that would be sufficient to make the purchase price determined for the purpose of 16 C.F.R. 801.10(a)(2)(i). We would accordingly conclude that no filing is required as the size of transaction thresholds would not be met.

Please let me know what you think.

AGREE -
B Michael
7/19/05

Thank you for your assistance,
[redacted]

[redacted]

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IRS Circular 230 Disclosure: As required by U.S. Treasury Regulations governing tax practice, you