

Verne, B. Michael

801.10

From: [REDACTED]  
Sent: Wednesday, October 12, 2005 7:30 PM  
To: Verne, B. Michael  
Subject: Fair Market Valuations

Mike,

We have a client that is acquiring all of the issued and outstanding voting securities of a corporation. The purchase price in the letter of intent is stated as an amount equal to \$90,000,000 minus the indebtedness of the company that is outstanding as of the closing date. It is our understanding that at this time the parties are unable to reasonably estimate the value of the indebtedness and therefore we believe that the acquisition price is undetermined.

If the buyer's board of directors or its delegee makes a good faith determination (within 60 days of closing) that the fair market value of the voting securities is less than \$53.1 million, then my understanding is that the parties are allowed to rely on that determination, and no HSR filing is required. Can you confirm this understanding? Is no HSR filing required even if the indebtedness is such that, at closing, the buyer is required to pay actual consideration that is greater than \$53.1 million?

Can you also confirm the following: (i) to rely on a fair market value determination, the buyer's board of directors would need to make the determination in good faith and within 60 days of closing; (ii) the determination could be documented with resolutions by the buyer's board of directors or its delegee; and (iii) in the event the parties are not able to close the transaction within 60 days of such determination, the buyer's board of directors or its delegee would need to make a similar determination in a similar fashion to be able to rely on a fair market value determination?

Thanks as always for your assistance. I appreciate your guidance on these questions.

Rachel

Agree -  
B. Michael  
10/12/05



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