

801.10

Verne, B. Michael

From: [REDACTED]  
Sent: Friday, November 11, 2005 9:30 AM  
To: Verne, B. Michael  
Subject: I don't do this to torment you.

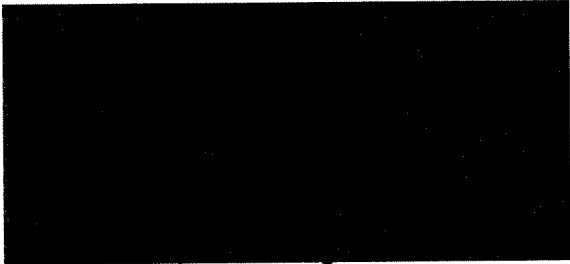
Here's a real case that came up yesterday.

X will pay \$75 million to acquire all of the common stock from the shareholders of Y. Y also has four classes of preferred stock, which also have present voting rights. In addition to acquiring the common stock from the Y shareholders, X agrees to pay \$50 million directly to Y, so that Y can redeem (for cash) all of the preferred stock.

Is this a \$75 million deal or a \$125 million deal for HSR purposes?

I would be inclined to say that X has acquired all of the voting securities of Y and has paid consideration of \$125 million to do so. Even though X doesn't technically acquire the preferred stock, X acquires all of the voting power, including the voting power that had been represented by the preferred stock. Thus, I would count the \$50 million toward the acquisition price.

What say you?



I AGREE  
B. Michael  
11/11/05

=====  
=

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

=====  
=