801.10

Verne, B. Michael

From:
Sent: Friday, November 18, 2005 1:48 PM
To: Verne, B. Michael

Mike:

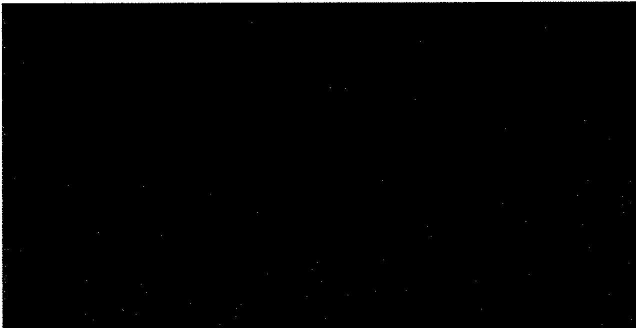
I have a different twist on the transaction that you and I discussed this morning.

A foreign company ('A") is creating two new wholly-owned subsidiaries, B and C. A will then "sell" to B and C certain of its assets. B and C are not making any immediate payment to A for the assets. As a result, A will hold a receivable for the value of the assets and B and C will owe a debt to A for the value of the assets.

A will then sell the shares of B and C to X. X will pay A $45 million for the combined shares of B and C. At the same time, X will pay-off to A the combined debt that B and C owe to A (about $50 million).

Case # 97 in the ABA Premerger Notification Practice Manual would seem to indicate that because X is buying the voting securities of B and C (rather than assets), the fact that X is paying off B and C's debt to A would not be considered in valuing the shares being acquired. In other words, the acquisition of the shares of B and C would be valued at $45 million, not $95 million.

Do you agree with this analysis?



Agree
B. Michael
11/18/05