

Verne, B. Michael

801.10

From: [REDACTED]  
Sent: Tuesday, July 11, 2006 6:12 PM  
To: Verne, B. Michael  
Cc: Ovuka, Nancy M.  
Subject: HSR Question

Section 801.10(c)(3) of the HSR Regulations provides that "fair market value" is to be determined in good faith by the board of directors of the ultimate parent entity included within the acquiring person; or by an entity delegated that function by such board.

What is intended by the reference to an "entity delegated....", i.e., who can the board delegate such role to? Can they delegate that role to the CFO? Must the board ultimately approve the specific valuation ascribed by the delegated entity or is it sufficient if it merely delegates the duty and have that delegate report back to the officers of the corporation?

If you could let me know how that provision has been interpreted, it would be very helpful.  
Thanks.

[REDACTED]

THE BOARD CAN DELEGATE THE ROLE OF DETERMINING FAIR MARKET VALUE TO ANY ONE THEY WANT. THERE IS NO REQUIREMENT THAT THE BOARD TAKE ANY FORMAL ACTION TO APPROVE THE DETERMINATION, BUT THEY ARE ULTIMATELY RESPONSIBLE FOR IT.

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*Bruce*  
7/11/06

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