801.10

Verne, B. Michael

From: [redacted]
Sent: Wednesday, October 04, 2006 11:29 AM
To: Verne, B. Michael
Subject: Revised Valuation Question

Dear Mike,

A slightly revised question relating to tender offer threshold filing fees. My client, X, is acquiring Target, which is listed on a foreign exchange, in a cash tender offer.

X plans to offer a fixed amount (in foreign currency) of consideration to be paid for each share of Target. X plans to acquire 50% of the Target but will accept 100% of the shares tendered. Thus, X is prepared to hold 100% of Target's voting securities after the tender offer.

Under § 801.10(a)(1), the value of the voting securities is the market price of the securities or, if the acquisition price has been determined, the greater of the market price and the acquisition price.

Under § 801.10(c)(1)(i), the market price of the voting securities is the lowest closing quotation within the 45 or fewer calendar days prior to Target's receipt of the 803.5 letter.

Although the acquisition price is fixed in foreign currency, the U.S. dollar equivalent changes from day to day according to the exchange rate. You have advised others that an acquisition price fixed in foreign currency may render the acquisition price undetermined (within the meaning of § 801.10(a)) and, thus, the market price should be used to calculate the value for filing fee purposes.
http://www.ftc.gov/bc/hsr/informal/opinions/0409007.htm

Since X is prepared to accept 100% of the tendered shares of the Target but the acquisition price is undetermined because of currency fluctuation, we believe that X should value the transaction for purposes of the filing fee by using the market price for 100% of the Target's voting securities. Do you agree?

Thanks,
[redacted]

Yes.
B Michael V
10/4/06
