

801.10

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, April 23, 2009 11:08 AM
To: Verne, B. Michael
Subject: HSR question

Hi Mike:

Hope all is well.

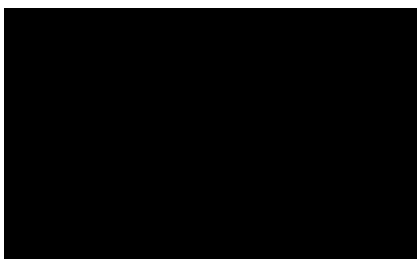
I have a question regarding the value of voting securities that will be held as a result of an acquisition. Purchaser currently does not hold any shares of Target. Purchaser and Target have entered into a Merger Agreement whereby Purchase will acquire all of Target's outstanding voting securities. Because Target is in distress, Purchaser also is negotiating with the creditor committee. The total consideration to be paid is approximately \$75 million consisting of cash and voting securities of Purchaser. Approximately \$25 million of the acquisition price is earmarked to pay off existing debt of the Target. The debt to be paid consists of outstanding Senior Subordinated Notes -- convertible debentures that are convertible into Target's common stock.

The question is whether the funds earmarked to pay off the outstanding Senior Subordinated Notes can be excluded from the acquisition price because the funds are not consideration for the Target's outstanding voting shares. I understand that generally funds earmarked to pay off debt of the Target is not viewed as consideration. I believe that the principle should apply in this case as well but wanted to confirm this because, while the funds are being used to pay off Target's existing debt, the debt qualifies as convertible voting securities under the HSR Rules. If viewed as an acquisition of convertible voting securities, it seems reasonable to take the view that the acquisition of the convertible debentures is nonetheless exempt.

It seems that either line of analysis results in an acquisition price for the outstanding voting securities less than \$65.2 million. Either the funds earmarked to pay off Target's debt is not consideration or the acquisition of the Senior Subordinated Notes is exempt under the HSR Rules as an acquisition of convertible voting securities.

Please confirm that you agree.

AGREE
[Signature]
4/23/09



The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email [REDACTED] and destroy the original message. Thank you