801.10

Verne, B. Michael

From: [redacted]
Sent: Monday, September 14, 2009 3:25 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: FW: 801.10 Question

Dear Mike -

[redacted] and I would like to confirm the following analysis.

Company A, a publicly traded company, is acquiring by merger 100% of the shares of Company B, a private corporation. The merger consideration to be paid to Company B's shareholders are Company A shares in a fixed ratio exchange to Company B shares.

Our question concerns the valuation of the acquisition of Company A shares by Shareholder 1, the UPE of Company B. Shareholder 1 will acquire Company A shares according to the fixed ratio exchange formula, and will also purchase additional Company A shares for cash. Closing is more than 45 days away. Because closing is more than 45 days away, (1) the acquisition price of the Company A shares to be acquired by Shareholder 1 is not determinable and (2) Shareholder 1 can not use the market price of Company A's shares to value the transaction. Instead, the value of Shareholder 1's acquisition is the fair market value of Company A's shares, plus the cash consideration. The board of Shareholder 1, or the board's designee, must in good faith determine the fair market value of Company A's shares. Shareholder 1 may rely on this good faith valuation for 60 days. If closing takes place more than 60 days after the valuation, then Shareholder 1 must recompute the fair market value of Company A's shares that it intends to acquire.

Please let me know if you agree with this analysis.

Agree
B
9/14/09

Thank you.

Best regards,

[redacted]

[redacted]

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