

Verne, B. Michael

From: [REDACTED]
Sent: Friday, April 16, 2010 4:03 PM
To: Verne, B. Michael
Subject: Informal HSR Interpretation

Dear Mr. Verne:

We have a situation where Corporation A ("A") is acquiring 100% of the voting securities of Corporation B ("B"). A portion of the total cash that A pays at closing ("closing cash") will go to retire certain debt of B. We understand that in the context of the acquisition of B's voting securities, the portion of the closing cash that goes to retire B's debt is not considered for purposes of valuing the transaction. *Please confirm.* ✓

In addition, a portion of the total closing cash will be applied as described below. *We would like to confirm whether each of these elements described below should be included in or excluded from the value of the transaction.*

1) A portion of the closing cash will go to Natural Person X, a shareholder of B, as payment for personal goodwill relating to B. The value of the personal goodwill of Natural Person X belongs to Natural Person X and is not an asset on the balance sheet of B. The personal goodwill is separate and distinct from the assets of B, and its value will be determined by an independent appraisal. The personal goodwill has previously benefited B, and is expected to be valuable to any other similar business with which it is associated, including that of A. *Consistent with Informal Opinion 0910009, please confirm that personal goodwill in this situation should not be included as part of the value of the transaction.* ✓

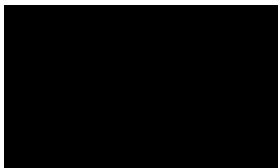
If the debt and personal goodwill can properly be excluded from the value of the transaction, then you need not respond to the following additional questions. However, if either of these items is included in the value of the transaction, then please respond to 2-4.

2) B previously sold certain tangible assets to C, an entity owned by some of B's shareholders, in exchange for a promissory note payable to B. At close, B will reacquire those assets from C, and the note will be canceled. *Please advise whether the value of these assets should be included within the value of the transaction.*

3) B currently leases certain tangible assets from D, an entity owned by some of B's shareholders. At close, a portion of the closing cash will be used to acquire those assets from D's owners. *Please advise whether the value of these assets should be included in the value of the transaction.*

4) One shareholder of B will provide a non-compete agreement to A. The shareholders of B have attributed a certain dollar value to this non-compete agreement and have agreed that a portion of the closing cash equal to that dollar value will go solely to the shareholder who provides the non-compete. *Please advise whether the value of this non-compete agreement should be included in the value of the transaction.*

Thank you, and best regards, [REDACTED]



AGREE
B
4/20/10

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