801.10

Verne, B. Michael

From: [redacted]
Sent: Friday, July 09, 2010 1:27 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: Question Concerning Purchase Price and Size-of-Transaction (801.10)

Mike -

I hope that you are doing well and had a pleasant holiday weekend.

[redacted] and I have a question about determining acquisition price under 801.10 (a)(i). The hypothetical we have is a transaction where A will acquire 100% of the voting securities of B for $70 million as long as B has at closing at least $10 million in cash, accounts receivable and other cash equivalents. If B has less than $10 million of these assets, the consideration will be reduced by the amount of the shortfall.

We believe that to the extent that B will satisfy the requirement by holding cash, demand deposits, certificates of deposit, notes and treasury bills, that amount should be excluded from the purchase price. On the other hand, to the extent that B will satisfy the requirement by holding accounts receivable, the amount of the accounts receivable should not be excluded from the purchase price.

In other words, if B holds $10 million in cash and demand deposits, this is a $60 million transaction, and would not be reportable. If, on the other hand, B holds $5 million in cash and $5 million in accounts receivable, this is a $65 million transaction, and would be reportable.

Please let us know if you agree with this summary. Please call if you would like to discuss this our if you need any additional information.

I look forward to your response.

Thank you for your assistance.
Regards -
[redacted]

[redacted]

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I'm not following your thinking here. Isn't this like having a working capital adjustment to the purchase price? If that's the case, it doesn't matter what category of assets makes up the shortfall, just whatever is specified in the agreement. I think you might be confusing this with our position that accounts receivable are not cash equivalents, but that isn't applicable to this. If the agreement specified that the purchase price would be $70 million unless B had less than $10 million in widgets, the same analysis would apply. If A has some basis for estimating the shortfall then the acquisition price is determined. If not, A must do a fair market valuation of B's voting securities.

BM

7/9/10