

From: [Gillis, Diana L.](#)
To: [REDACTED]
Subject: RE: Question Regarding Determination of Value of Assets
Date: Friday, August 26, 2016 9:52:00 AM
Attachments: [REDACTED]

Hi [REDACTED]

The acquirer will have to do a FMV under 801.10(c)(3), which the board can delegate to another.

-Diana

From: [REDACTED]
Sent: Thursday, August 25, 2016 4:25 PM
To: Gillis, Diana L.
Subject: Question Regarding Determination of Value of Assets

Hi Diana,

I am working on a potential transaction involving a hospital alignment agreement. The transaction involves the acquiring UPE entering into an agreement whereby it has the right to, among other things, appoint the board of directors of the acquired UPE. There is no actual money being exchanged at closing. Based on the acquired UPE's financial statements, the value of the assets being acquired is greater than \$78.2 million. My question is whether it is necessary for the acquiring UPE's board of directors make a determination as to the value of the assets, or whether the acquiring UPE can make a determination without board of director action (assuming such determination concludes that the value is over the filing threshold)? I can understand why formal board determinations would be necessary where the board concludes that the fair market value is under the threshold, but I am not sure about the FTC's position where the conclusion is that the value is over the threshold.

Thank you again for all of your help.

Best,

[REDACTED]

[REDACTED]