Haynes, Lanea

From: Shaffer, Kristin
Sent: Wednesday, September 20, 2017 2:33 PM
To: [redacted]
Cc: Walsh, Kathryn E.
Subject: RE: 801.10 Question -- Purchase price determination earnouts and accounting for cash in voting securities valuation

[redacted]

1. No, the fixed portion's proximity to the threshold does not affect whether or not the overall purchase price is determined. See PNPM #54.
2. We will generally accept any FMV that has been made in good faith and on a commercially reasonable basis.

Best regards,
Kristin

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From: [redacted]
Sent: Tuesday, September 19, 2017 11:09 AM
To: Walsh, Kathryn E.
Cc: [redacted]
Subject: 801.10 Question -- Purchase price determination earnouts and accounting for cash in voting securities valuation

Dear Ms. Walsh:

I expect you are quite busy, but I am hoping you or a colleague can provide some guidance on the following questions:

1. Informal Interpretation # 0409005 indicates that when it is difficult to predict whether a contingent earnout payment will be met, the purchase price is undetermined. If the certain portion of the purchase price comes a few million dollars short of the size-of-the transaction threshold (assume for our purposes that the size of the person test is met), does that general guidance still apply? For example, if a buyer in good faith believes that it is difficult to determine the chances that a $30 million earnout is met but if pressed might guess that it is a 50/50 shot and the non-contingent portion of the purchase price is $10 million below the size-of-the-transaction threshold, does that make the purchase price somehow determined because of how close the rest of the purchase price is to the size-of-the transaction threshold?

2. If the purchase price for voting securities is undetermined due to earnouts and other purchase price adjustments, a buyer needs to make a fair market valuation of the voting securities it is purchasing and the buyer in good faith thinks a reasonable valuation method would look at something like an earnings multiple and ignore any balance sheet cash, could that valuation method still be appropriate?

Thank you for your time.

Best regards,
[redacted]