

801.13
801.10

August 23, 2000

By Facsimile (202) 326-2624
& First Class Mail

Michael Verne
Attorney
Premerger Notification Office
Room 303
600 Philadelphia Avenue, NW
Washington, D.C. 20580

2000 AUG 25 PM 4:15
FACSIMILE

Dear Michael:

This letter follows up on our discussion yesterday concerning the interpretation of Rule 801.10(c)(1)(ii). The question prompting my call was: In a series of acquisitions of voting securities traded on a national exchange, does the value of previously-acquired voting securities fluctuate with the market, or is it fixed forever at the time those securities were acquired? You confirmed that the value of previously-acquired voting securities must be determined anew when subsequent acquisitions are made.

The factual background in which the question arises is as follows. Two companies ("seller" and "buyer") entered into a collaboration agreement under which the buyer was required to purchase shares of the seller upon the seller's achievement of certain milestones. To date, there have been three separate (non-reportable) purchases of shares ("Milestones 1-3"), and we expect another purchase ("Milestone 4") will come due within the next few weeks. Some of the Milestone 1-3 acquisitions were made before the securities were traded on a national exchange, but the shares now trade on a national exchange.

The market value of the Milestones 1-3 shares has declined since they were purchased, and the current market value of all shares (including Milestone 4) falls below \$15 million. However, if the original purchase prices were used to value Milestones 1-3, the Milestone 4 purchase might push the value of the aggregate holdings above \$15 million.

We concluded that the Milestone 4 acquisition is a non-reportable transaction based upon the following reasoning. As required by Rule 801.13, we have valued the Milestone 4 acquisition for HSR purposes by aggregating the value of Milestones 1-3 and Milestone 4. In valuing Milestones 1-3, Rule 801.10(c)(1)(ii) requires us to look to the

Michael Verne
Page 2
August 23, 2000

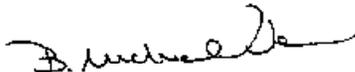
lowest closing bid price within 45 days preceding the Milestone 4 acquisition, rather than within the 45 days preceding each acquisition in the series. As we read Rule 801.10(c)(1)(ii), it does not fix the value of voting securities once and forever at the time of their original transfer. Rather, the Rule allows them to fluctuate with the market and requires a new valuation of all securities at the time of acquisition of any securities. Thus, if the current market price for the Milestones 1-3 and Milestone 4 shares total less than \$15 million, the Milestone 4 acquisition will be non-reportable.

Thank you for your prompt response to my inquiry. Please call me if you have any questions.

Very truly yours,

A rectangular area of the document has been completely redacted with black ink, obscuring the name and any other identifying information of the sender.

AGREE - THIS IS THE PROPER ANALYSIS FOR
VOTING SECURITIES TRADED ON A NATIONAL EXCHANGE.


8/29/00