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From: [REDACTED]  
To: [REDACTED]  
Date: Mon, Mar 26, 2001 2:34 PM  
Subject: Summary E-Mail Re: Our March 19th Conversation

Mike,

During our March 19th, 2001 telephone conversation, I sought your advice for the purpose of determining whether a \$45,000,000 Employee Bonus Pool should be included in the acquisition price of a transaction. We discussed the following hypothetical:

Company A is acquiring 100% of the outstanding voting securities of Company B, a privately held company, for consideration of approximately \$175,000,000.

Additionally, Company A is establishing a \$45,000,000 Employee Bonus Pool to be paid to the employees of Company B when/if certain performance milestones are achieved. Many Company B employees are also Company B shareholders and one of the factors being used to allocate Bonus payments from the Employee Bonus Pool is an individual employee's equity interest in Company B. Consistent with the characterization of these funds as an Employee Bonus Pool, non-employee shareholders are not eligible to receive payments from the fund, but non-shareholder employees of Company B are eligible to receive payments from the fund.

We discussed whether the \$45,000,000 fund should be included in the acquisition price as an earnout because one of the factors being used to allocate payments from the fund was an individual employee's equity interest in Company B. Based upon our discussion, you advised that it was not necessary to include the \$45,000,000 fund in the acquisition price because, assuming the fund is a bona fide Employee Bonus Pool, the use of employee equity ownership as a guide to allocate bonus payments would not automatically convert the fund into an earnout payment to shareholders. Further, you suggested that the fact that non-employee shareholders would not be receiving any payments from the fund, but non-shareholder employees would receive such payments supported the conclusion that the fund should be properly characterized as an Employee Bonus Pool, not an earnout.

Please advise if this summary misstates our conversation.

Thanks,  
[REDACTED]

AGREE - THIS IS NOT AN EARNOUT  
WHICH MUST BE ADDED TO THE ACQUISITION  
PRICE.

N. OVUKA & K. BERG CONCUR.

*Michael Verne*  
3/28/01