

Verne, B. Michael

From: [REDACTED]
Sent: Monday, August 23, 2004 6:02 PM
To: Verne, B. Michael
Subject: HSR question

Mike,

With respect to an asset deal the up front cash payment is under 50 million, but there are contingent earn-out payments, the size of which will depend on the post-acquisition earnings of the company being purchases. In this case, does one treat the issue as though no sale prices has been set and look to the fair market value of the assets to be sold in order to determine if a filing is required and would the Board of the buying company make the assessment?

Thanks,

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IF THE CONTINGENT PAYMENTS ARE TOO SPECULATIVE TO ESTIMATE, THE ACQUISITION PRICE IS UNDETERMINED & THE VALUE WOULD BE FAIR MARKET VALUE. THE BOARD OF THE ACQUIRING PERSON OR ID DESIGNEE WOULD DETERMINE THE FMV.

B. Michael
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