

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, May 11, 2005 12:54 PM
To: Verne, B. Michael
Subject: FW: HSR Question

Mike--

Please see the explanation below. In addition, there is a discussion of T+3 on the SEC web site at <http://www.sec.gov/answers/tplus3.htm>

Let me know if you have any other questions.

Best regards,

[REDACTED]

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, May 11, 2005 12:46 PM
To: [REDACTED]
Subject: RE: HSR Question

[REDACTED]--This is the definition from the "Glossary of Stock Plan Terms" found on the website for the National Association of Stock Plan Professionals:

"T+3 - The settlement date for securities transactions such as a stock sale. T+3 refers to the obligation in the brokerage business to settle securities trades by the third day following the trade date. "Settlement" occurs when the seller receives the sales price (less the broker's commission) and the buyer receives the shares."

Basically, when a stock option is exercised in a cashless exercise, the broker is obligated to settle the exercise and deliver the cash or shares within 3 days after the exercise date. I hope that helps --Jim

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, May 10, 2005 3:26 PM
To: [REDACTED]
Subject: Fw: HSR Question

Do you have something that explains it? I am out of the office.

-----Original Message-----

From: Verne, B. Michael <MVERNE@ftc.gov>

To: [REDACTED]

Sent: Tue May 10 14:48:20 2005

Subject: RE: HSR Question

[REDACTED] - what is the T+3 rule? Is this an SEC rule? Do you have any additional info on it (a cite maybe)? Thanks

-----Original Message-----

From: [REDACTED]

Sent: Tuesday, May 10, 2005 7:52 AM

To: Verne, B. Michael

Subject: HSR Question

Mike--

The following is a link to an informal staff opinion that I found on the FTC's web site (in case you are not able to access it, the number for this opinion is 0210009).
<http://www.ftc.gov/bc/hsr/informal/opinions/0210009.htm> This opinion concerned the "cashless" exercise of stock options. I have three questions relating to this opinion.

First, does this opinion still represent the current opinion of the Premerger Notification Office?

- YES

Second and assuming that it still represents the current opinion of the PNO, does the relatively new T+3 rules change the opinion? The facts in the opinion state that the stock is sold on the same day the shares are exercised. With T+3, up to 3 days are permitted for settlement. In other words, if the intent to make a "cashless" exercise remains, but the entire "cashless" transaction takes until the third day, does the PNO's opinion change?

- NO

- NO

Third and again assuming that the attached still represents the current opinion of the PNO, if a person makes a partial "cashless" exercise (for example, where sufficient shares are immediately sold to cover the exercise price and taxes, but the remaining "net profit" shares are held), would the "cashless" portion be disregarded consistent with the earlier opinion? In other words, would the "cashless" exercise portion be treated as though it did not occur, leaving only an analysis of the acquisition of the stock that is retained in the exercise?

- YES

Thank you for your time and attention to these questions. If you would like to discuss any of these questions with me, please do not hesitate

to call me at the number below.

Best regards,

[Redacted]

[Redacted]

SEE RESPONSES ON
PREVIOUS PAGE.
B. Madala
5/11/05

[Redacted]

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