

Johnson, Janice C.

From: [REDACTED]
Sent: Monday, December 05, 2005 4:36 PM
To: Johnson, Janice C.
Cc: [REDACTED]
Subject: question re: valuation of with minority voting securities

Janice,

I spoke with you on Friday and again today regarding the following question about inclusion of minority voting securities in the value of a transaction. I would like to confirm the answer via email for my records:

Question: In a reportable acquisition of voting securities, must minority interests in separate entities held by the acquired person's UPE, which are also being acquired by the acquiring person, be included in the HSR filing, in determining the value of the transaction, etc.?

Answer: Yes, but only in certain circumstances. 16 U.S.C. 801.14 provides that "the value of all voting securities of the acquired person which the acquiring person would hold as a result of the acquisition" be included in the valuation, but this is limited to acquisitions where (1) the acquisition of the minority shares independently constitutes a reportable transaction under HSR or (2) the acquired person (UPE) currently controls the issuer of the voting securities.

Please advise if the above is correct/not correct.

Correct

not correct

Thank you.

Regards,
[REDACTED]

I informed the writer that the minority interests would be required to be aggregated per HSR Rule 801.14 if the issuer of all of the minority interests is the same person.

JJ

M. Vera e concurs

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