

Verne, B. Michael

From: [Redacted]
Sent: Wednesday, December 07, 2005 4:16 PM
To: Verne, B. Michael
Subject: Effect of Cash on Hand of the Acquired Entity in a Voting Securities Transaction

Mr. Verne:

Thank you for your time today. This e-mail confirms our telephone conversation of earlier today during which we discussed two alternative structures of an acquisition of all of the voting securities of a public company.

Underlying facts. Target Inc. ("Target"), a publicly held corporation, has cash on hand in the amount of \$35,000,000. A Corp. ("A") has entered into an agreement to purchase 100% of the outstanding stock of Target. The closing will occur more than 45 days from the agreement date.

Alternative 1. Pursuant to the Merger Agreement, A will pay to Target's shareholders \$25,000,000 for their shares of Target. As part of the transaction, Target's cash on hand (totaling \$35,000,000) will also be transferred to Target's shareholders.

Alternative 2. Pursuant to the Merger Agreement, A will pay to Target's shareholders \$60,000,000 for their shares of Target. The \$35,000,000 in cash on hand of Target remains in the company and A may transfer the cash to itself as it pleases.

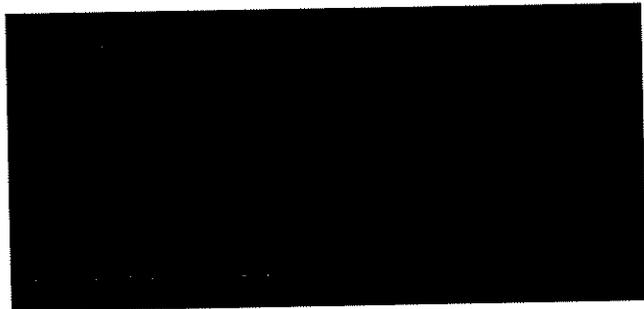
You agreed the parties would not have a duty to file under Alternative 1. You also agreed (assuming that Rule 802.4 did not apply) that the parties would have an obligation to file under Alternative 2, despite the fact that the economic outcome of the two alternatives is the same (i.e. Target's shareholders receive a total of \$60,000,000 and A pays a net amount of \$25,000,000).

If this e-mail does not accurately reflect our discussion, please let me know as soon as possible.

Again, thank you for your time.

Best regards,

*Agree -
B. Michael
12/7/05*



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