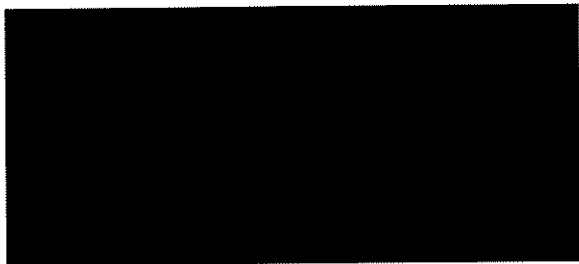


801.10

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, January 12, 2006 9:01 AM
To: Verne, B. Michael
Subject: Quick question/confirmation

Mike: Hope you had a nice holiday, and all is well. Just wanted to quickly confirm a conclusion. We have a stock acquisition that does not meet the size threshold. However, the deal provides for a certain amount of working capital left in the target; seller kicks in for any deficit, and buyer refunds any excess. The acquisition price is not affected in any event. It is not anticipated, but theoretically possible, that there would be excess capital post-closing such that if it were added it to the acquisition price, it could trip the size threshold. I read the rule as not including this in the acquisition price, but wanted a reality check. Thanks!



A working capital adjustment does affect the acquisition price. It should be treated the same as any other contingent portion of the acquisition price (e.g. earnouts, etc.). If there is a reasonable basis for estimating the adjustment then the acquisition price is determined. If it is too speculative to estimate, the acquisition price is undetermined and a fair market valuation will be the size-of-transaction. As long as the FMV is done in good faith, if it is less than \$53.1 MM it can still be relied on for 60 days, even if the working capital adjustment at closing takes the consideration over that amount.

B. Michael
1/12/06