

Verne, B. Michael

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From: [REDACTED]  
Sent: Thursday, June 29, 2006 4:39 PM  
To: Verne, B. Michael  
Subject: SOT test v/s vs. options

Hi Mike,

In a merger in which the value placed on the voting securities is less than the threshold and there are options which if you add the value the threshold is exceed. After closing for a moment in time the options will be converted into voting securities (those voting securities will never vote). Are the 'options' considered voting securities for SOT test?

Second question, if there is a purchase price adjustment based on the cash as reflected on the balance sheet at closing so if there is substantial cash the acquisition price will go up to reflect the cash, does that change anything?

As always many thanks.  
[REDACTED]

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Yes - if the options are exercised they are voting securities, even if they will never vote. On your second issue, the purchase price adjustment would have to be taken into account. If there is a reasonable basis for estimating it, then that estimate should be added to the acquisition price. If the adjustment is too speculative to estimate, then the purchase price is undetermined and the fair market value of the voting securities would be the size-of-transaction.

*Bruders*  
6/29/06