

801-10
7(A)(c)(10)

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, May 02, 2007 6:32 AM
To: Verne, B. Michael
Subject: Restricted Stock valuation 801.10(c)

Hi Mike, hope all is well with you. In this transaction A is acquiring B by merger. A is a publicly traded company. B shareholders will receive cash + A v/s. One shareholder (C") will receive restricted A v/s, C will have the present right to vote the A shares but not the present right to sell them, C will sign a stock restriction agreement that states the shares he receives will vest quarterly over 3 years, the first year, he will only vest in 1/3 of the total. He will be an officer of A.

To determine the value of the restricted A v/s to be received by C.

1. A v/s are publicly traded under 801.10(c)(1) the value would be the market price, the total market price here is approximately \$64 million.
2. However C is receiving restricted A v/s, therefore they are not publicly traded in that C may not sell them, so the value would be the acquisition price (which is undetermined) or the fair market value as determined by C (Rule 801.10(c)(2) & (3)). C must make a good faith determination as to the present value of the restricted A v/s and if it reaches the threshold must file.

If C determines the total value of the restricted A v/s does not presently reach the threshold no filing is required at this time. If when the A v/s held by C do vest (are no longer restricted), prior to the vesting C must determine if the total value of the A v/s has reached the threshold (801.1(c)(1)), if so C should submit an HSR at that time (30-days prior to vesting) unless an exemption applies.

Please let me know your thoughts.
Many thanks as always for your guidance.

[REDACTED]

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1

Agree with 1 and 2. When the restricted shares vest, a filing would be required only if the percentage of A voting securities held by C increases. C has already acquired the A voting securities (although restricted), so no filing would be required upon vesting if the voting power of the vested shares is the same as the voting power of the restricted shares.

BN
5/2/07