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Verne, B. Michael

**From:** [REDACTED]  
**Sent:** Thursday, July 12, 2007 3:43 PM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** Size-of-Person Test

Hi Mike.

I hope you are doing well. It was nice to talk to you earlier today.

We have a question about the size-of-person test and the financials that are used to determine if a party satisfies the \$12 million prong of the size-of-person test.

Company A proposes to acquire all of the voting securities of Company B, a U.S. issuer not engaged in manufacturing, for \$70 million. Company B is its own UPE. Company A has in excess of \$119.6 million in assets or annual net sales. Company B's most recent regularly prepared balance sheet (April 30, 2007) shows total assets of approximately \$7 million. Company B's most recent regularly prepared annual income statement (FY 2006) shows total net sales of approximately \$71 million.

Largely for historical reasons, and because of a contractual requirement contained in an existing Shareholder's Agreement among the shareholders of Company B, Company B performs a US GAAP reconciliation of its **annual** financial statements, which requires Company B to recognize an intangible asset. The reconciliation in Company B's most recent annual financial statement (12/31/06) shows total assets in excess of \$12 million. However, Company B's most recent regularly prepared balance sheet (April 30, 2007) does not show assets in excess of \$12 million because it was not performed with a US GAAP reconciliation. Company B does not do such reconciliations in connection with its monthly or quarterly financials.

We understand that when determining Company B's size under the size-of-person test, it is necessary to examine only its most recent regularly prepared annual income statement to determine its annual revenues and its most recent regularly prepared balance sheet (April 30, 2007) to determine its total assets, and we would disregard the 12/31 balance sheet that was prepared with a US GAAP reconciliation. Please advise if you agree.

Mike, thanks for your help.

Best regards,  
[REDACTED]

[REDACTED]

AGREE  
Bm  
7/12/07