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**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Sunday, November 04, 2007 11:17 PM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** Question concerning the "Size of the Transaction Test" and "Third Party Bank Debt."

We are emailing you in order to seek your view as to whether or not the below-mentioned transaction would be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"). We are counsel to Company A which will shortly enter into a Stock Purchase Agreement to purchase all of the outstanding capital shares of Company B from the shareholders of Company B for an acquisition price of approximately \$67 million subject to a working capital adjustment.

Our question to the Premerger Notification Office ("PNO") relates to how the purchase price for purposes of determining compliance under the size of the transaction test is calculated when it is contemplated that a portion of the purchase price at the closing will be used to satisfy certain third-party bank debt of Company B in the amount of approximately \$17 million. None of the Selling Stockholders of Company B have guaranteed repayment of Company B's debt obligation to said third-party banks. At the closing, the purchasers, at the direction of the sellers, will direct a portion of the acquisition proceeds directly to said third-party banks or sellers will receive such proceeds and simultaneously pay off said third-party bank debt of Company B. In addition we are advised that approximately \$10 million of the proceeds will be directed to pay off a promissory note issued by several of the selling shareholders or their affiliates.

In both Informal Interpretation Nos. 88 and 91, appearing in the ABA Section of Antitrust Laws's Premerger Notification Practice Manual (4th Edition, 2007), the PNO has indicated that a portion of the purchase price, which will be used to pay off or satisfy third-party bank debt, should not be included in the calculation of the purchase price for purposes of determining compliance under the size of the transaction test. For the purposes of this email, please assume that the amount of the working capital adjustment as well as any other adjustments to the purchase price will be nominal and that all parties meet their applicable size of the person tests.

Our view is that the purchase price for purposes of determining compliance under the size of the transaction test is under \$59.8 million.

Based upon our description of the facts and circumstances as described above, would you agree with our view that this transaction would not be reportable under the HSR Act?

AGREE -  
 [Signature]  
 11/5/07

11/5/2007