

801.10

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, February 28, 2008 12:02 PM
To: Verne, B. Michael
Subject: Section 801.10

Mike-

Our client, Company A, is acquiring shares of a publicly-traded target, Company B. The consideration for the transaction is a fixed ratio of shares of Company A stock. The rules state that where the acquisition price has not been determined, the value shall be the market price. The market price is (801.10(c)(ii)) the lowest closing quotation within the 45 days prior to the consummation of the acquisition.

The parties plan on closing in early May - 45 days prior to the consummation of the transaction would put us at mid-March. If we filed in the next couple of days, we obviously wouldn't be able to determine the lowest closing quotation 45 days prior to consummation. How should we value the acquisition? I read a similar informal interpretation stating that we should use the fair market value of the shares, as determined by the Board of company A. Is this correct?

Any guidance would be helpful.

Thanks.

YES - USE FAIR
MARKET VALUE
BM
3/3/08

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