

801.11

Verne, B. Michael

From: [Redacted]
Sent: Friday, July 09, 2010 2:39 PM
To: Verne, B. Michael
Cc: [Redacted]
Subject: Interpretation of 801.11(c)(2)

Mr. Verne,

We would like to discuss with you the interpretation of the term "last regularly prepared balance sheet" in 801.11(c)(2) as it relates to the facts below.

Company B is acquiring approximately 17% of the voting securities of Company A along with a license from Company A to develop certain intellectual property owned by Company A. Company A prepares audited annual financial reports (fiscal year ending 9/30) in which certain assets are valued according to GAAP. Company A also prepares non-audited quarterly balance sheets for internal use. These balance sheets carry over the asset valuations from the last audited balance sheets (which typically are the annual audited financial statements). In May of the current fiscal year, Company A prepared a special GAAP balance sheet in connection with the transaction with Company B. The preparation of this GAAP balance sheet resulted in a re-valuation of certain of Company A's assets. In preparing its regular quarterly balance sheet for the period ending 6/30/2010, Company A intends to incorporate the asset valuations from the most recent GAAP balance sheet, which was prepared in May. This will likely result in the Company A's assets falling below \$ 12.7M, the current threshold under Section 7A(a)(2)(B)(iii) (size-of-person test).

Based on our understanding of the interpretation of 801.11(c)(2), the 6/30/2010 quarterly balance sheet would constitute the "last regularly prepared balance sheet" of Company A. This balance sheet is being prepared at the normal time (quarterly) and according to the same accounting rules (GAAP). The primary difference between the 6/30/2010 quarterly balance sheet and Company A's previous quarterly balance sheets is that the 6/30/2010 balance sheet will use the asset valuations from the more recent May audited financial statements as opposed to the last annual audited financial statements. This does not change the timing or method of preparation of the quarterly balance sheet, it just incorporates more recent asset valuation information than is typically available on a quarterly basis.

Please let me know if you agree with this analysis, and if you disagree, please let me know what factors are relevant to your analysis. I am available to discuss further at your convenience.

Sincerely,

[Redacted Signature]

AGREE
B
7/9/10

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