

801.10

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Monday, September 27, 2010 9:26 PM  
**To:** Verne, B. Michael  
**Subject:** Valuation Question

Mike,

I have a difficult valuation issue for which I could use some guidance:

Company A, Inc. and Company B, LLC plan to form a joint venture, HoldCo LLC. Company A, Inc. will contribute substantially all of its assets to Holdco LLC in exchange for approximately 95% of the membership interests of Holdco LLC. Similarly, Company B, LLC will contribute substantially all of its assets to Holdco LLC in exchange for approximately 5% of the membership interests of Holdco LLC, some cash at closing, and the potential for some additional equity in Holdco upon the joint venture's achievement of future benchmarks.

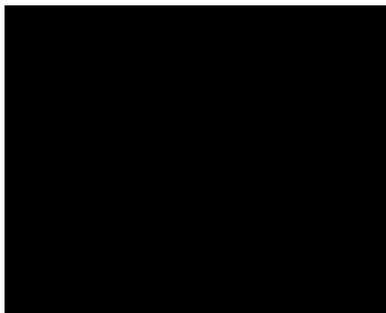
Since it is Company A and Company B that will be receiving the membership interests of Holdco (rather than their respective shareholders and membership interest holders), my understanding is that this will be treated as the formation of a joint venture under 801.40 and only Company A, Inc. has a potential filing obligation since it is acquiring control of Holdco LLC.

My question involves Company A, Inc.'s valuation of the interests it will receive in HoldCo LLC. Since the purchase price is not determined for purposes of 801.10, a fair market valuation of the HoldCo LLC membership interests must be made. My understanding is that, as explained in the Premerger Notification Practice Manual, it is the PNO's position that Company A, Inc. can rely on a fair market valuation of the assets it is contributing in exchange for the Holdco membership interests in order to determine the fair market value of those interests. In this case, Company A recently had an independent valuation of its business which valued the entirety of Company A, Inc. at less than \$30 million, which would render the transaction unreportable.

There are, however, substantial synergies between Company A, Inc. and Company B, LLC such that the value of the joint venture, while somewhat speculative, could be as high as \$300 million. Indeed, a company similar to Company B, LLC was recently sold for approximately \$300 million to a buyer who could realize similar synergies. Such a high valuation would, however, be somewhat speculative since the only asset held by Company B, LLC is a contract to develop a specific project which may or may not ultimately prove successful.

In light of these facts, can Company A, Inc. nevertheless rely on its fair market valuation of the assets it is contributing to Holdco LLC as a valuation of the Holdco LLC membership interests it is receiving in the transaction?

Thanks,



YES -  
B  
9/28/10