

Verne, B. Michael

801.10

From: [REDACTED]
Sent: Tuesday, July 05, 2011 1:52 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Transaction Structure/Exclusion of Employee Bonus Payments

Mike. We have a proposed transaction that involves bonus and retention-type payments to employees, and we wanted to confirm with you whether it is appropriate to exclude the value of these payments in determining whether the size-of-transaction test is met.

The transaction structure is described below.

- Buyer and Seller are entering into an Asset Purchase Agreement for the purchase of certain assets (the "Agreement").
- Total payments being made by Seller are in excess of \$66M. However, that figure includes funds that will be used by Seller to make two types of payments to existing employees.
 - First, the Agreement provides that \$16 million will be used to fund "Transaction Bonus Payments" being made to certain employees that are important to the business being sold, specifically certain "required" and "key" employees. These employees will be entering employment agreements with Buyer to be effective post-closing. The payments will be made by Seller pursuant to Transaction Bonus Agreements between Seller and each individual employee.
 - Second, as reflected in the Agreement, the Seller will make payments of \$4 million to other employees not included within the "required" or "key" employees of the business being sold. These payments will be allocated at Seller's discretion. Note that post-closing these employees will remain as employees of Seller and not the business being sold.

If the total value of both payments together are excluded, the value of transactions would be below the \$66M size-of-transaction threshold.

We wanted to confirm that it is appropriate to exclude these payments.

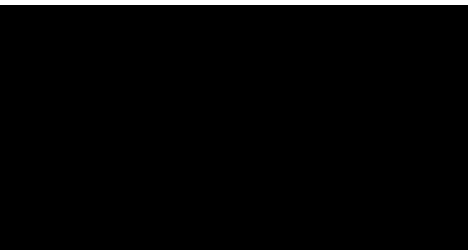
Thanks.

Regards. [REDACTED]

AGREE - EXCLUDE BOTH

[Handwritten Signature]

7/5/11



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