

Verne, B. Michael

From: Verne, B. Michael
Sent: Tuesday, December 20, 2011 10:39 AM
To: [REDACTED]
Cc: Walsh, Kathryn
Subject: RE: an HSR question

[REDACTED] - I think that he can do a FMV based on the current trading price. He knows how many shares he is going to get, just not what the price per share will be on the day of vesting. If he determines that the value of the shares is currently more than \$66 million, he should file. If he determines that the FMV is less than \$66 million, he can rely on that for 60 days. If he files and at the time of vesting the actual value based on either market price or FMV is less than \$66 million, there would be no refund of the fee, because the transaction was represented to satisfy the size of transaction test at the time of filing. Conversely, if the determined that no filing was required and at the time of vesting determines that the value exceeds \$66 million, he can still close without filing as long as he is still within 60 days of doing the FMV.

Bm
12/20/11
K. WALSH CONCURS

From: [REDACTED]
Sent: Monday, December 19, 2011 4:00 PM
To: Verne, B. Michael
Subject: an HSR question

Mike,
I hope you are well.
I have a question relating to the grant of RSU's and the issue of valuation to determine whether a filing would be required.

An executive was awarded an RSU several months ago worth \$50 million. In other words, on the day of vesting (next month), he will get that number of shares that he would have received at the time of the grant, valued at the trading price of those shares on the day of the grant. (e.g. "x")
Assume that vesting will happen on some day in mid to late January, when he will get x number of shares. How can we determine today if he will have to file? X shares on vesting(closing) day will be possibly valued at greater than \$66 million. or it might be less than \$66 million. However, we cannot really use a market price calculation as we do not know from what day we start counting back to get the lowest closing price. Would we count back 45 days from the time of the anticipated vesting? The one thing we do not want to happen is for the vesting to happen on a day when the stock jumps in value to put him over \$66 million. That date is not in his control. If we say that the value is undetermined, how do we calculate the fmv?
If he determines that fmv would put him over \$66 million, and on the actual day of vesting, the x number of shares he will receive is less than \$66 million, would the filing have been deemed unnecessary as under the size of transaction threshold, and he would receive his filing fee back?
Now you see why we wanted to eliminate filings for acquisitions of voting stock as part of compensation awards.
Best wishes for a Happy Holiday.

[REDACTED]

[REDACTED]