

802.21

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, March 07, 2012 8:38 AM
To: Verne, B. Michael
Subject: RE: 25% threshold valuation One Final Question

Thanks Mike, so to rely on 802.21 the acquiring person must make an acquisition and at the time of the acquisition the value must exceed \$1 billion (as adjusted)?

As I'm sure you can tell I have a client trying to understand all of the possible outcomes. Basically the questions are: whether the two prongs of the thresholds must be satisfied at the same time, or if each prong of the threshold is satisfied at some point in time during the one year period is that enough to satisfy the 25% threshold requirements. The following scenarios assume a filing at the 25% threshold was made, the waiting period expired and all of the described transactions occur within one year of the expiration of the waiting period.

Scenario #1

As a result of an acquisition Company A holds 25% of the voting securities with an aggregate value of less than \$1 billion (as adjusted).

The value of the shares held by Company subsequently increases and the value is in excess of \$1 billion (as adjusted).

Has Company A satisfied the 25% filing threshold? NO

Scenario #2

As a result of an acquisition Company A holds 24% of the voting securities with an aggregate value in excess of \$1 billion (as adjusted).

The target does a buy-back of shares and as a result of the buy-back Company A holds 25% of the voting securities.

The value of the shares held by Company subsequently decreases and the value is less than \$1 billion (as adjusted).

Has Company A satisfied the 25% filing threshold? YES

Scenario #3

As a result of an acquisition Company A holds 25% of the voting securities with an aggregate value in excess of \$1 billion (as adjusted).

The target subsequently issues additional voting securities so Company A's percentage interest is decreased to 23%.

Has Company A satisfied the 25% filing threshold? YES

Scenario #4

As a result of the acquisition Company A holds 25% of the voting securities with an aggregate value of less than \$1 billion (as adjusted).

The target subsequently issues additional voting securities so Company A's percentage interest is decreased to 23%.

The following month the value of the shares increases to \$1 billion (as adjusted).

Has Company A satisfied the 25% filing threshold? NO

Of course I'm available to talk if you think that would be easier.

BM
3/7/12

As always many, many thanks,

[REDACTED]

[REDACTED]