

Clark-Coleman, Sheila

MW - Concur

From: [REDACTED]
Sent: Tuesday, October 09, 2012 4:22 PM
To: Clark-Coleman, Sheila
Subject: HSR Inquiry

Ms. Clark-Coleman:

Many thanks for taking the time to speak with me today. The questions we discussed appear below.

Debt Payoff

Debts owed by the target company to certain trusts will be paid off at closing. It is my understanding that the amount paid off is deducted from the purchase price for HSR purposes.

Is the amount of the debt still deducted from the purchase price even if the trusts were created by controlling shareholders of the target? *Yes*

Change In control Provisions

As we discussed, informal opinions 1104012 (4/27/11) and 1107001 (7/5/11) appear to indicate that payments made to current employees pursuant to "change in control" provisions are deducted from the purchase price for HSR purposes.

In a proposed transaction, there are two different types of change in control payments:

- Two employees of the seller have stock appreciation plans that provide for payments upon a change in control; and
- A change in control provision in an employment agreement entitles the employee to payment 6 months after a change in control.

Should the above payments be deducted from the purchase price? *Yes*

Further, the parties have not determined who (the buyer or the seller) will be responsible for these payments. Does this impact the analysis above? *Yes*

Many thanks again.

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