

807-10

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, October 24, 2012 4:48 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Informal Opinion Request - Rule 801.10

Set forth below is a description of a proposed transaction and tentative conclusions on whether the parties must comply with the notification and waiting period requirements under the HSR Act. Please confirm the conclusions stated or advise as to how the proposed transaction should be analyzed for this purpose.

1. Buyer will acquire 100 percent of the voting securities of Seller. Size of person tests are satisfied and no exemption appears to apply, but for reasons stated below the size of transaction does not satisfy the minimum size of transaction threshold (\$50M as adjusted, currently \$68.2M).
2. The parties' agreement will provide for a gross cash purchase price of \$98.5M (includes \$6.5M for acquisition of Buyer's voting securities held by Seller), subject to reductions for payments at closing as follows: (i) pay off Seller's existing bank debt and third-party subordinated debt (projected to total no less than \$42.5M); (ii) pay off Seller's transaction expenses for investment banker fees, attorney fees, and prepayment fee on debt (projected to total \$3.5M); and (iii) pay off Seller's obligations to staff, triggered by sale of the company, under a contractual long-term incentive plan (none of the staff who will receive these payments holds a controlling interest in Seller's voting securities) (\$6.5M).
3. Each pay-off at closing described above may be excluded from the purchase price for Seller's voting securities, as none of these payments is for the acquisition of voting securities, yielding a net purchase price projected to be \$46M (\$98.5M less (\$42.5M+\$3.5M+\$6.5M)). Thus, the total transaction value for the acquisition of Seller's voting securities is less than the current minimum size of transaction threshold, and the transaction is not subject to the notification and waiting period requirements of the HSR Act.
4. Buyer is not required to make a fair market value determination of Seller's voting securities under Rule 801.10(c), if the parties' acquisition agreement provides for each of the pay-offs described above and documents prepared for closing specify amounts for each payment.

AGREE -
K WALSH CONCURS
[Signature]
10/25/12

[REDACTED]

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