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Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, February 05, 2013 5:16 PM
To: Verne, B. Michael
Subject: Valuation question

Hi, Mike:

I hope everything is going well with you (I'm guessing so with the Ravens' big win Sunday :-). It turned out to be quite a nail biter in the end.

Per my voice mail, I just want to make sure I'm calculating a purchase price accurately. Seller has been involved in negotiations to sell 100% of the voting securities of its wholly owned subsidiary, Company X, to Buyer. The negotiations moved somewhat slowly, and at Buyer's request and in contemplation of the stock acquisition, the parties recently entered into a partially exclusive license agreement prior to the completion of the SPA. As part of that license agreement, Buyer would be obligated to pay an additional fee as consideration for the continued grant of rights if the SPA was not signed by a certain date (although the fee would be waived if closing actually did occur prior to another specified date).

1. Should the exclusive portion of the license be valued and aggregated with the value of the stock acquisition in calculating the Size of Transaction (noting that if the exclusive license had not been granted early, any such rights would have simply been transferred as part of the stock acquisition)?
2. Assuming neither the signing nor the closing dates are met, should that additional fee provided for in the license agreement be taken into account in determining if the Size of Transaction test is met? Would it change the analysis if the signing date was not met but the closing date was, but the Seller decided to negotiate to get the additional payment anyway?

Please don't hesitate to let me know if it would be helpful to discuss or if you need any additional information.

Thanks so much,

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bcllp2012

Because the stock purchase agreement is not a certainty, you would not aggregate the value of the voting securities with the value of the exclusive portion of the license at the time of entering into the licensing agreement. Since you are not sure whether you will be making the second payment for the license (in the event the SPA is not agreed upon), the acquisition price is undetermined, so you would do a FMV on the exclusive portion of the license. If you later agree on the stock purchase, its value still would not be aggregated with the value of the license, even if that acquisition was not reportable, because you don't aggregate a stock acquisition with an earlier asset acquisition.

BM ✓
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Kw } SP Concern