801.10(c)(1)

Verne, B. Michael

From: [redacted]
Sent: Thursday, February 21, 2013 2:05 PM
To: Verne, B. Michael; Walsh, Kathryn
Subject: SOT - Stock Question

Mike and Kate:

Thanks, as always, for addressing these questions. Here is a situation I want to run by you.

1. Natural person, X, files an HSR on January 1. X already holds 1,000,000 shares of stock with a current market price of $70 per share. (Market price being calculated by the lowest price in the 45 days before the 803.5(a) notice is sent).

2. X intends to acquire an additional 1,500,000 in additional shares in the 12 months following expiration of the HSR waiting period. So at the "market price" calculated off the 803.5(a) notice, X will exceed the $100 million, as adjusted, threshold. X files at that higher threshold.

3. X, in fact, acquires the 1,500,000 shares in the 12 months following the expiration of the HSR waiting period. However, the "market price" of the stock dropped to $35 per share, as measured by the lowest closing price in the 45 days prior to the acquisition.

It seems to me that, under 801.10(c)(1), to calculate the "market price" for the stock held and acquired in (3), we can use <u>either</u> the lowest closing bid price in the 45 days prior to the acquisition, <u>or</u> the lowest closing bid price in the 45 days prior to the 803.5(a) notice. Do I have this right? This is important to determine whether the $100 million was exceeded in the 12 months following the termination of the waiting period, so the 5 year grace period is locked in.

It would certainly seem unfair if the person were denied the benefit of the 5 year period by a facts beyond his control. (Both the stock price and the timing of the purchases, which are subject to restriction by the SEC).

Thanks,

[redacted]

[redacted]

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You use the 45 days prior to the 803.5(a) notice for the stock acquired during the year following notification as well as the stock already held. The whole point of calculating it prior to filing is to lock in a value. So the value of the stock held after the acquisition during the first year would be 2.5 MM x $70 = $175 MM, exceeding the $100 million (as adjusted) threshold and allowing additional acquisitions up to the $500 million (as adjusted) threshold during the 5 year period. The language you reference in #3 of using either the 45 day period prior to the notice or the 45 day period prior to the acquisition is laying out how you value the stock if it is **reportable** (45 days prior to the **notice**) or **non-reportable** (45 days prior to the **acquisition**).

BM
2/21/13

KW concurs