901.10

Verne, B. Michael

From: [redacted]
Sent: Monday, March 18, 2013 4:40 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: Acquisition by assumption of debt

Dear Mike:

I am writing to confirm that, based on my understanding of the PNO's current treatment of the assumption/payoff of the debt of an acquired entity by the acquiring person, the transaction described below would not be reportable.

The transaction is structured as follows:

Step 1: Company A plans to acquire an option to purchase substantially all of the equity interests in Company B from Option Holder. The acquisition of an option to acquire equity interests is not, itself, an acquisition of non-corporate interests, and as such, Step 1 does not itself lead to a reporting obligation.

Step 2: Company A will exercise the option acquired in Step 1 and will acquire from Company B substantially all equity interests in Company B. The exercise price for the Option is $100 million. In satisfaction of the exercise price of the Option:

1. Company A will assume $100 million in existing debt owed by Company B to Creditor (a third party) pursuant to Note 1 and Company A will execute a new promissory note in favor of Company B's Creditor;
2. Creditor will execute a waiver, release and novation, discharging Company B from its obligation to pay the existing $100 million in principal under Note 1.

In addition, Company A will issue another promissory note to Creditor for approximately $60 million - in satisfaction of the balance of Company B's current outstanding debt owed to Creditor.

Thus, as a result of the transaction, Company A will acquire substantially all equity interests in Company B and Company B's current debt obligations with respect to Creditor will be assumed and/or paid off by Company A's execution and delivery to Creditor of two new promissory notes. I understand that, based upon Informal Opinions 1211011 and 0805010, any amount of Company B's debt assumed and/or paid by Company A should be excluded from the "acquisition price" for purposes of determining the value of the transaction. Because no additional consideration will be paid, the acquisition price and the resultant value of the transaction is $0, rendering the transaction non-reportable.

Thanks as always!

Best,
[redacted]

AGREE
BMV
3/19/13

KW CONCURS