801-11(e)

Verne, B. Michael

From: [redacted]
Sent: Tuesday, April 02, 2013 2:36 PM
To: Verne, B. Michael; Walsh, Kathryn
Subject: Question re: 801.11(e)

Dear Mike and Kate,
I have a question about 801.11(e) – specifically, if a newly formed entity without a balance sheet is acquiring $75 million of voting securities and $25 million of non-voting securities (bonds), and its only asset at closing will be the $100 million of cash to be used to pay for the voting securities and the non-voting securities, is the entity entitled to deduct all $100 million of cash from its pro forma calculation or only the $75 million being used to pay for the voting securities? I found a couple of informal interpretations (links below), which seem somewhat relevant even though they are in the context of transactions where a portion of the transaction was exempt under 802.51. I would be grateful for your input. Best regards,
[redacted]

http://www.ftc.gov/bc/hsr/informal/opinions/1011005.htm
http://www.ftc.gov/bc/hsr/informal/opinions/0910010.htm

[redacted]

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See Interp #116 in the PNPM, p.151 – paragraph beginning with "Moreover, the PNO…"

This was specifically talking about cash to pay liabilities in a voting stock deal also being excluded under 801.11(e), but we have also applied it to any other cash that will be "exhausted by the acquisition" (including non-voting stock) to be acquired from the same issuer as the voting securities.

BM
4/2/13

KW CONCURS