

Verne, B. Michael

801.10

From: [REDACTED]
Sent: Friday, April 19, 2013 4:59 PM
To: Verne, B. Michael
Subject: Fair Market Valuation Process

Hi Mike.

I hope you are doing well.

We have a few questions about the process for determining the fair market value of assets to be acquired for purposes of determining whether a transaction would be reportable under the HSR Act.

X engages in a number of asset and other acquisitions that require a fair market valuation under the HSR rules. X understands that a financial officer of X involved in the transaction at issue would be a de facto delegate of X's Board for purposes of making the fair market valuation, and that X's Board is not required to undertake any formal delegation to the officer. X would like to set up the following process for making fair market valuations under the HSR Act's rules.

A "director" (or above) in X's Corporate Development Department who was involved in the due diligence and/or negotiation of the acquisition at issue would prepare the initial fair market valuation under Section 801.10. A "director" of X is not an officer. X considers its VPs and above to be officers.

Such director of Corporate Development (or the officer above him or her) who prepares the fair market valuation would submit it to a "director" or "senior director" in X's Finance Department who was responsible for reviewing the financial aspects of the transaction at issue. Such "director" or "senior director" would review the fair market valuation and if it is acceptable approve it. Such director or senior director of Finance is not an officer but reports to the VP, Finance (an officer), who reports to the CFO (an officer).

- (1) Would this be an acceptable process under Section 801.10 that would not require formal Board resolution or delegation?
- (2) Is it necessary that a VP in Corporate Development or Finance review and approve each fair market valuation or can such VP delegate review and approval to a director or senior director of Finance as described above? If delegation to the director or senior director is acceptable, would it be sufficient for the VP (an officer) to send one e-mail or one memo to the director or senior director delegating to him or her (or his or her successor) the task of doing the fair market valuations under the HSR Act for all transactions in which he or she may work on the financial aspects?

Thanks for your help Mike.

Best regards,

[REDACTED]

This is all
~~done by [REDACTED]~~ OK
Ben
4/29/13

KW COMMENTS