Gillis, Diana L.

From: Whitehead, Nora
Sent: Wednesday, June 17, 2015 10:49 AM
To: [redacted]
Cc: Walsh, Kathryn E.; Gillis, Diana L.
Subject: RE: NPV discount rate

Because your contingent earnout payment is reasonably estimable, it is treated like a fixed future payment (which may not be discounted to present value). If you had a non-estimable contingent payment, then you would have to do an FMV, which would necessarily require a discount to present value.

Nora Whitehead
(202) 326-3262
Check out the PNO Blog!

From: [redacted]
Sent: Tuesday, June 16, 2015 12:02 PM
To: Walsh, Kathryn E.
Cc: Gillis, Diana L.
Subject: NPV discount rate

Hi Kate: Further to my voice mail, I represent a buyer that is valuing a transaction for HSR purposes where the consideration includes a contingent earn out that may or may not be met, as it is dependent on meeting certain performance results that may or may not be met.

The buyer has evaluated the likelihood of having to pay out the earn out and has come up with an expected future earn out payment, based on that likelihood.

I understand the buyer is permitted to further discount that expected payment based on net present value, and may use that NPV amount in its valuation calculation. Is the buyer locked in to using a particular discount rate to determine NPV, or is the buyer permitted to utilize any rate that it views to be reasonable, in its good faith judgment?

I am available if you would like to discuss on the phone.

Thanks, as always, for your guidance.

Best,

[redacted]

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