

Haynes, Lanea

From: [REDACTED]
Sent: Wednesday, January 17, 2018 3:36 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora
Subject: FW: Valuation questions

From: Shaffer, Kristin
Sent: Wednesday, January 17, 2018 3:35:40 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Valuation questions
Auto forwarded by a Rule

[REDACTED],

Question 1:
We agree that tax credits do not count against the use of 802.51.

Question 2:
801.10(c)(3) requires a fair market value determination by each board. Either or both boards may delegate this authority. How the boards choose to delegate and approve the valuation is up to them.

Best regards,
Kristin

Kristin Shaffer
Attorney
Premerger Notification Office
Federal Trade Commission
202-326-3434 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Wednesday, January 17, 2018 10:19:19 AM
To: [REDACTED]
Subject: Valuation questions

PNO team:

Could you please reconfirm that it is still the PNO's position that deferred tax assets and tax loss carry-forwards are treated as cash equivalents under the HSR rules and, similarly, qualify as "investment assets" for purposes of the foreign issuer exemption (802.51)? This would be consistent with informal interpretations #0708002 and #0810007, as well as the treatment of prepaid expenses and tax credits generally.

On a separate topic, if an acquiring person has two different UPEs and an FMV determination needs to be made, is it acceptable to have just one of UPEs make the determination and/or delegate that function to another entity or individual? Or do both UPEs need to agree on the determination and/or delegee? Would the CFO of the acquiring entity

be acceptable as a de facto delegee of the boards of both UPEs, which would be consistent with the last paragraph of Interpretation #55 in the Premerger Notification Practice Manual (5th ed.)?

[REDACTED]

[REDACTED]

[REDACTED]