

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Monday, September 28, 2020 1:58 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Valuation of Assets - Triangular Merger of Two Agricultural Farm Supply and Grain Marketing Cooperatives

From: Carson, Timothy
Sent: Monday, September 28, 2020 1:57:57 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Valuation of Assets - Triangular Merger of Two Agricultural Farm Supply and Grain Marketing Cooperatives

For a filing made now (i.e., ASAP), the acquiring person needs to determine what the fair market value of the target will be at consummation and that fair market value will be the size of transaction for purposes of the filing. The size of transaction can be expressed as a range on the form. Further, the notification need not be updated due to a change in value after a timely filing is made assuming (1) the filer adheres to the good faith standard expressed in Rule 801.10, and (2) the notified transaction is consummated prior to the expiration of the notification.

From: [REDACTED]
Sent: Thursday, September 24, 2020 5:53:30 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Re: Valuation of Assets - Triangular Merger of Two Agricultural Farm Supply and Grain Marketing Cooperatives

I apologize - here is the table that was supposed to be attached

On Thu, Sep 24, 2020 at 4:52 PM Joel Dahlgren <dahlgren@blackdogcooplw.com> wrote:

I represent two large agricultural farm supply and grain marketing cooperatives in Wisconsin. These cooperatives executed a transaction agreement and plan of merger on July 13, 2020. Then, on August 24, 2020, the voting members of the Acquired UPE approved the merger. The effective date provided in the plan of merger is 12:01 a.m. on March 1, 2021.

This is an acquisition of assets. The attached table presents balance sheet information for the Acquired UPE for August 31, 2019, July 31, 2020, and a proforma balance sheet for February 28, 2021. That table also projects forward a balance transaction on March 1, 2021 for the Acquiring UPE.

We want to file the Notification ASAP. The CEO has just announced his new leadership team. That team is beginning to prepare plans for the eventual integration of the Acquired and Acquiring UPEs. Neither of these organizations is flourishing. The agricultural economy is still weak. Crop and livestock prices are low. International trade seems weak. As we approach March 1, 2021 the sooner that the parties can integrate the merger, the greater the financial benefit.

The Acquired UPE's July 31, 2020 balance sheet reports consolidated assets of \$135.0 million plus 54 million of debt that Acquiring UPE will assume through the merger. If the good faith valuation is between \$189 million and 940 million, the filing fee is \$125,000. Seems straightforward.

I want to understand how a good faith valuation today affects the valuation on the effective date, if at all. Between now and March 1, 2021, for example, inventories could increase \$50 million. The valuation on March 1, 2021 will be much higher than on July 31, 2021. Between the \$50 million increase in inventory and a \$50 million increase in debt, this transaction is suddenly nearly \$300.0 million rather than \$189.0 million. Are there ramifications to the either Acquiring or Acquired UPE? Filing fees?

If our request for early termination is granted, are there subsequent events that must still be reported to FTC/DOJ? What happens, for example, if at the closing the value of the transaction is \$189.0 million? What about if it increases to \$950.0 million dollars? Is there a requirement that the Acquiring UPE must circle back and update its filing information?

How long after March 1, 2021 (the effective date), does the Acquiring UPE have to update its information (if that is quired?). If the Acquiring UPE, for example, has engaged a firm to prepare a fair market valuation for its August 31, 2021 audit, could the acquiring party wait until July or August to update its filings in the FTC and DOJ offices?

[REDACTED]

[REDACTED]

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[REDACTED]