

Verne, B. Michael

From: [Redacted]
Sent: Monday, May 14, 2012 3:10 PM
To: Verne, B. Michael
Cc: [Redacted]
Subject: Liabilities clarification

Mike,

Following up on our conversation this morning, we have confirmed that there are two categories of rebates treated as accrued liabilities by Seller for accounting purposes.

One category includes rebates (i.e., discounts based on percent of net sales) effectively earned upon the purchase of goods. These rebates are received monthly or quarterly by the customers, generally in the form of credit memos or checks. The credit memos are issued for the rebate amount, and can be used to offset future payments. Based on our earlier conversation, we believe the FTC treats these rebates as discounts and not accrued liabilities for HSR purposes.

The second category is comprised of rebates available to customers if certain volume conditions are met. These rebates are paid out annually (although they may be credited in, say, January or March instead of by close of December). Based on our earlier conversation, we believe the FTC treats these rebates as accrued liabilities, the value of which needs to be included in the Acquisition Price calculation for HSR purposes.

The above rebates are also paid to customers who purchase through distribution, which we assume you will agree does not alter the above analysis.

Many thanks in advance for your confirmation.

*Agree
B
5/15/12*

Best regards,



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