

802.51

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, July 18, 2012 6:42 PM
To: Verne, B. Michael; Walsh, Kathryn
Subject: Question re 802.4, 802.50 and Comity

Mike and Kate,

Can you tell me whether Informal Opinion 0410003 is still the position of the PNO? <http://www.ftc.gov/bc/hsr/informal/opinions/0410003.htm>. In other words, where the primary acquisition by a foreign person of a foreign issuer is exempt under 802.51(b), any secondary acquisitions (whether of US or foreign issuers) are not reportable based on principles of comity?

Does this principle also apply where the foreign target is an unincorporated entity, under 802.4 and 802.50? In the transaction I'm looking at, a foreign person ("Buyer") will acquire 100% of the interests in eight foreign non-corporate entities ("Targets") from a single foreign seller. Targets' primary assets are small minority holdings in a number of other persons (i.e., unaffiliated companies). Applying 802.4, 802.50 and 801.21, I would exclude from the calculus (i) all those minority holdings, (ii) all Targets' foreign assets because, in the aggregate, they generated less than US\$68.2 million in sales in or into the U.S. in the most recent fiscal year, and (iii) cash and non-voting securities/debt instruments. If Targets' remaining non-exempt assets have a FMV of less than US\$68.2 million (in fact I think it's zero), Buyer's acquisition of Targets would be exempt from HSR notification. Based on principles of comity, would Buyer's secondary acquisitions of the minority interests held by Targets also be non-reportable?

Thanks,

[REDACTED]

AGREE -
BM
7/18/12

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