

Verne, B. Michael

802.50

From: [REDACTED]
Sent: Friday, March 02, 2007 7:38 AM
To: Verne, B. Michael
Subject: Acquisition of foreign v/s, assets, LLC

802.51

Hi Mike,

Glad to see you regained light! In this transaction the buyer will acquire a business line from the seller, it will be in one of the following forms:

1. All assets
2. Assets and voting securities
3. Assets, voting securities and membership interest in non-corporate entities

This may not be determined until shortly before closing. It is an acquisition of US and foreign assets/v/s or entities by a foreign entity.

My thoughts:

1. Acquisition of v/s of a foreign issuer - To the extent it is structured as an acquisition of voting securities 802.51 would apply and if the entity has less than 59.8 million of US assets or less than 59.8 million or sales in or into the US that piece would be exempt from the HSR.
2. Acquisition of foreign assets - To the extent it is structured as an acquisition of assets 802.50 would apply and if both parties are not foreign if the assets do not generate sales in or into the US of 59.8 million they are exempt. To the extent they are both foreign look to 802.50(b). Are assets from all foreign jurisdictions aggregated for this? For example, if there are acquired assets in Korea, Brazil and Mexico they would be aggregated? I assume they are not aggregated with assets located in the US.
3. Acquisition of non-corporate interest - Would these be treated as v/s or assets?

If the parties do not determine the exact structure of the transaction prior to filing to the extent it is not determined would they be treated as asset acquisitions?

Many thanks as always for your guidance.
Sydney

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1 - agree

2- Correct - aggregate US sales across all foreign assets, but not with sales of US assets

3 - Neither - it is treated as an acquisition of non-corporate interests. Using 802.4 you look through to the underlying assets and apply 802.50 to the foreign assets. If they have US sales of less than \$59.8 MM and the remaining US assets have a fair market value of less than \$59.8 MM, the acquisition is exempt under 802.4.

Buehler
3/2/07