

802.9

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, May 23, 2007 10:36 AM
To: Verne, B. Michael; Ferkingstad, James H.
Cc: [REDACTED]
Subject: Exempt acquisition under 802.51(1) and 802.4

Michael:

As our voicemail indicated, we spoke yesterday with Jim Ferkingstad of your office about this issue and he recommended that we speak to you. Here are the relevant facts:

[Assume that the Acquiring Party and the Acquired Party meet the size of the person tests; and the acquisition value exceeds the reporting threshold]

A UK Corporation ("Acquiring Party") with no assets in the U.S. or sales into the U.S. is seeking to acquire 100% of the stock in a U.S. Corporation ("Acquired Party"). The Acquired Party (a holding company) has no sales or operations in the U.S., and its only assets are its holdings in the several foreign issuers.

802.4 exempts from reporting "an acquisition of voting securities of an issuer ... whose assets together with those of all entities it controls consist or will consist of assets whose acquisition is exempt from the requirements of the Act ... is exempt from the reporting requirements if the acquired issuer ... and all entities it controls do not hold non-exempt assets with an aggregate fair market value of more than \$50 million (as adjusted).

802.51(1) exempts from reporting "the acquisition of voting securities of a foreign issuer by a foreign person ... unless the acquisition will confer control of the issuer and the issuer either: holds assets located in the U.S. ... having an aggregate value of over \$50 million (as adjusted); or made aggregate sales in or into the U.S. of over \$50 million (as adjusted) in its most recent fiscal year.

In our deal, if the Acquiring Party were simply purchasing the shares of the foreign issuers, the deal would not be reportable pursuant to 802.51. Therefore, we propose that because a direct purchase of the foreign issuers would be exempt, and the only assets of the Acquired Party are the otherwise "exempt" shares in the foreign issuer, pursuant to 802.4, the acquisition of the Acquired Party by the Acquiring Party is also exempt from filing.

Please confirm.
Regards,

[REDACTED]

[REDACTED]

USE 802.50 IN CONJUNCTION WITH 802.4;
NOT 802.51
AGREE - NOT REPORTABLE
[Signature]
5/23/07