

Verne, B. Michael

801.1(g)

From: [REDACTED]
Sent: Friday, June 01, 2007 2:25 PM
To: Verne, B. Michael
Subject: Cash tender offer question

Hi, Mike -

I haven't talked to you in a while and I hope you are well. I have a question about cash tender offers. We have a situation in which a foreign company is acquiring the voting securities of a foreign issuer through open market purchases on a foreign exchange. The transaction may be subject to HSR filing requirements, not eligible for the 802.51 exemption. In the event this transaction is reportable, I am trying to determine whether it would be subject to treatment as a "cash tender offer" under 801.1(g)(2), given that it is a tender offer (in the generic sense) and the consideration is all cash. The problem I see is that the foreign cash tender offer might not be considered a "tender offer" under 801.1(g)(1), which specifies that it must meet the definition of section 14 of the Securities Exchange Act of 1934, 15 U.S.C. 78n. As it is a foreign open market purchase transaction, it would not seem to meet the SEC definition.

So my question is whether the definition of "cash tender offer" in 801.1(g)(2) is intended to reach generically all tender offers with cash as the consideration, or whether an element of this definition is that the tender offer be made only on a U.S. exchange.

Thanks,

[REDACTED]

[REDACTED]

FOREIGN TENDER OFFERS
CAN QUALIFY.
BM
6/1/07

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