

802.51

Verne, B. Michael

From: [Redacted]  
Sent: Friday, July 06, 2007 5:40 PM  
To: Verne, B. Michael  
Cc: [Redacted]  
Subject: Sales in or into the United States

Mike,

Can you confirm that, in the fact pattern described below, the sales of the target company do not constitute sales in or into the United States for purposes of Rule 802.51?

The proposed transaction is an acquisition of voting securities of a foreign issuer (the "Target"). The Target is a mining company whose operations are entirely outside the United States. It owns no assets in the United States. During 2006, Target's revenues were generated from the sale of copper from its mines in Chile.

Target's sales of copper are made to various traders (some of which are headquartered in the United States). The traders, resell the copper to customers in various countries including the United States. The sales of copper to US customers during 2006 exceeded \$59.8 million.

In Target's sales to the traders:

1. Target has no control over the ultimate destination of the goods sold by the traders.
2. Target has no control over the pricing of the goods sold by the traders
3. The goods ultimately sold to US customers are commodities and are not formulated in any way for the US market.
4. The risk of loss passes to the buyer when the goods pass over the rail of the vessel at the port of loading (in Chile).
5. Title to the goods passes in Chile upon presentation of certain documents (bills of lading and insurance documents).

Under these facts, and based on interpretations 214-216 of the ABA Premerger Notification Practice Manual (Fourth Ed.), we are of the view that the sales described above are not "sales in or into the United States" for purposes of Rule 802.51 because (a) the indicia of beneficial ownership to the goods sold pass outside the United States and (b) Target has no control over the destination or resale pricing of its products.

Can you please confirm that our analysis is correct?

Many thanks,

[Redacted]

[Redacted]

AGREE -  
BM  
7/6/07

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