

802.51

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JF

From: [REDACTED]
Sent: Monday, December 10, 2007 12:05 PM
To: Ferkingstad, James H.
Subject: Acquisition of Voting Securities of a Foreign Issuer

Mr. Ferkingstad:

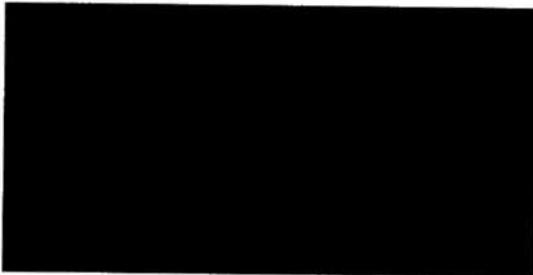
Thank you for speaking to me this morning about the applicability of 16 C.F.R. § 802.51 -- the exemption for "acquisitions of voting securities of a foreign issuer" -- to the facts of a pending acquisition. As I described to you, the facts are as follows:

1. The Target is a foreign company with primary manufacturing facilities in foreign country X and a small manufacturing facility in the United States. The target makes sales in the United States from its U.S. facility in the \$10-15 million range. The target's assets in the U.S. are substantially below the threshold under section § 802.51.
2. The target makes only about \$2 million in sales directly to the United States from its foreign manufacturing facilities in country X. The target also sells about \$75 million worth of a defense subsystem from the target's foreign facilities in country X to the foreign subsidiary of a U.S. defense contractor (also located in country X) for incorporation into a larger system, like a vehicle or an aircraft. This larger system is sold by the purchaser exclusively to the U.S. Defense Department. The particular military subsystem is specialized in the sense that it is designed for use on a particular vehicle or aircraft and generally will only work on that vehicle or aircraft (although the company also makes similar subsystems that fit on other systems).
3. The subsystems are delivered to the foreign purchaser in country X. Some of these subsystems are assembled into the larger system in the purchaser's factory in country X and the resulting larger system is then exported to the U.S. for sale to the U.S. Defense Department. The rest of these products are exported from country X to the U.S. by the purchaser and then assembled into the system in the U.S. and subsequently sold to the U. S. Defense Department. The target has no control of what is done with its products and does not know what proportion is assembled in each place.

You confirmed our analysis that the exemption of § 802.51 applies. The relevant sales by the target are delivered in the foreign country, and the target has no control of the products once they are delivered to the foreign purchaser. The target is competing

12/10/2007

in the foreign part/component market with respect to these sales, and they should not be considered sales "in or into the United States" under the exemption.



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