

801.10

Verne, B. Michael

From: [REDACTED]
Sent: Friday, March 14, 2008 3:31 PM
To: Verne, B. Michael
Subject: Indebtedness to be Repaid

Hi Mike,

I have a scenario I would like to run past you:

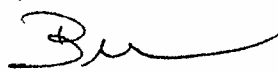
Company A is planning to acquire all of the outstanding voting securities of Company B for \$72 million, less the amount of any outstanding indebtedness. Before the shareholders of Company B are paid, any outstanding indebtedness will be repaid. The outstanding indebtedness totals \$17 million. Of that amount: (1) about \$9 million is owed to a minority shareholder of Company B; (2) \$6 million to Company B's parent in the form of a subordinated note issued by Company B's parent directly, and (3) the remainder to a minority shareholder of the entity that directly controls Company B (the entity just below Company B's UPE), also in the form of a subordinated note issued directly by this shareholder.

It is my understanding that:

- 1) The value of the debt to be repaid by Company A to the minority shareholder of Company B would not be included in the value of the transaction. This is based on the fact that this shareholder is a non-controlling shareholder that is otherwise unrelated to Company B. See PNO Manual, Interpretation No. 88 (noting that if the buyer pays off debt of a controlling shareholder that is not related to the acquired entity, the PNO would consider such repayment to be part of the consideration for the acquisition). Thus, I would consider this minority shareholder to be a third-party, and the repayment of debt to this third party to be excluded from the value of the transaction.
- 2) I believe that the value of the debt that will be repaid by Company A to Company B's parent would further not be included in the value of the transaction. I base this conclusion on PNO Manual, Interpretation 91, which indicates that where a buyer arranges for a third-party loan to a seller's subsidiary, to retire debt owed by the target to its parent, this value is not included in the HSR valuation of the transaction. Here, Company A will be directly repaying the loan made by Company B's parent to Company B. I believe that the value would not be included in the HSR value of the deal.
- 3) As with 1) above, the value of the debt to be repaid to the minority shareholder of the entity that controls Company B would not be included in the value of the transaction, since this entity is not included within Company B's ultimate parent entity.

Please let me know if you agree with my conclusions. Thank you very much for your assistance with this matter.

Thank you,

AGLEE -

3/17/08

3/17/2008

802.51

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, March 19, 2008 10:20 AM
To: Verne, B. Michael
Subject: Question about assessing foreign versus US sales under 802.51

Mike,

I have a question relating to whether certain sales do not qualify as sales in or into the US under Rule 802.51. The target is a foreign issuer that sells furniture manufactured in China ("Target"). A significant portion of the sales are to US customers. Target's only US assets are certain US IP rights relating to the furniture. These US assets have a fair market value of less than \$63.1 million. The furniture is manufactured by three joint ventures in China which the Target does not control. Prior to sale to its customers, Target takes title to the furniture at port in China. Title and risk of loss is then transferred to the ultimate buyers while the furniture is still in China once the furniture is loaded onto container ships. Target has a relationship with a sales representative that is affiliated with Target but controlled by a separate UPE from Target. The issuer holding the sales representative is being sold to the same buyer as is acquiring Target through a separate purchase agreement. This sales representative acts as the sales agent solely for Target in various regions including the US. These facts are similar to those in PNO Manual opinion 215 (4th ed.), which found sales in similar circumstances not to be US sales. I also understand that although the products may be designed with specific customers in mind or to include features requested by specific customers, the products are not specifically designed for the US market as in the example in PNO Manual opinion 216. In fact, the products are designed to meet more stringent standards than those specified by the relevant US trade association.

Other facts that may be relevant are that: (i) negotiations with customers are carried out by the sales representative in consultation with the Target's office in China and no sales are final without the approval of the pricing, terms and conditions of the proposed sale by a non-US subsidiary of Target; and (ii) a non-US subsidiary of Target executes the sales agreements outside the US. I believe that on these facts the sales of furniture in China by Target to US customers are not US sales. Please let me know if you agree.

Many thanks,

AGREE -
BM
3/19/08

3/19/2008

1A