

801.10  
802.51**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Thursday, May 29, 2008 1:12 PM  
**To:** Verne, B. Michael  
**Subject:** FW: [REDACTED] - Agreements

I have a transaction in which an uncontrolled foreign Newco is acquiring 100% of a foreign issuer which had sales in the US of \$50 million but assets here of \$65 million. As the acquiring person is a Newco, it will not meet the size of person test. One question relates to the value of the voting securities to be acquired. As I noted in an earlier e-mail, the purchase price is determined plus a fixed interest rate from December 31, 2007 until the closing, slated to occur on July 1.

1. Purchase price for the shares: USD 246m
2. Purchase price for the shares + interest until closing: USD 251 million
3. Purchase price for the shares + interest until closing + debt not to be refinanced: USD 290 million

Is it correct that the value of the debt not to be refinanced of the target need not be included as this is an acquisition of voting securities? And, is it correct that for purposes of 802.51(b)(2), attached below, that if the acquired person as a whole, and not just the entity to be acquired, has sufficient U.S. assets or sales, this exemption is not available?

(2) If controlling interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either \$50 million (as adjusted) limitation is exceeded.

(c) Where a foreign issuer whose securities are being acquired exceeds the threshold in paragraph (b)(1) of this section, the acquisition nevertheless shall be exempt where:

- (1) Both acquiring and acquired persons are foreign;
- (2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than \$110 million (as adjusted) in their respective most recent fiscal years;
- (3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to Rule§801.40(d)(2) of this chapter) are less than \$110 million (as adjusted); and
- (4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

CORRECT ON BOTH ISSUES.  
BM  
5/29/08

[REDACTED]