

801.1(i)(2)  
802.51

**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Friday, October 31, 2008 10:20 AM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** Valuation of U.S. Assets Held By Foreign Issuer Pursuant to Section 802.51(a)

Mike,

For purposes of 802.51(a), in determining the value of Target's assets "located in the United States (other than investment assets, voting or nonvoting securities or another person, and assets included pursuant to 801.40(d)(2)," must accounts receivable be considered in the calculation of the assets?

Patrick Sharpe's response in 1995 regarding a related 802.51(b) question suggests that a right to receive cash presently or at some future date, like accounts receivable, would be considered "investment assets" within the meaning of Rule 801.1(i)(2), and hence not included in the value of the assets.  
<http://www.ftc.gov/bc/hsr/informal/opinions/9508003.htm>. However, a more recent letter directed to you in 2005 suggests that the Acquiring Party considered Target's accounts receivable in its calculation of the Target's US assets.  
<http://www.ftc.gov/bc/hsr/informal/opinions/0506003.htm> It looks to me that you were answering the goodwill question, not necessarily agreeing with the inclusion of accounts receivable, so I'd be interested in your views directly addressing the accounts receivable question.

The aggregate sales of the Target in or into the U.S. do not exceed \$63.1 million.

As always, thank you for your time and assistance.

Best regards,



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We interpret investment assets very narrowly to include only what is in the definition in §801.1(i)(2): “cash, deposits in financial institutions, other money market instruments, and instruments evidencing government obligations.” So, accounts receivable would be included.

BN  
10/31/08