

802.51

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Wednesday, June 30, 2010 10:45 AM  
**To:** Verne, B. Michael  
**Subject:** 802.51/802.4

Mike,

I was wondering if I could get your input on the following analysis.

Company A is a United States issuer with total assets in excess of \$1 billion. Company B is a foreign issuer with total assets of less than \$40 million. Company B has one wholly-owned affiliate, Company B1. Company B1 is a United States issuer with total assets of less than \$20 million. The fair market value of Company B is approximately \$60 million excluding Company B1. The fair market value of Company B1 is approximately \$20 million excluding Company B. Company A proposes to acquire 100 percent of the issued and outstanding voting securities of Company B for \$80 million.

Company B1 sells bananas to the U.S. government in Iraq. Title to and risk of loss of the bananas passes in Iraq. The U.S. government pays Company B1 in the United States. Company B1 had approximately \$100 million in revenue in the most recently completed fiscal year, and forecasts approximately \$60 million in revenue in the current fiscal year.

Because title and risk of loss pass outside the United States, it would appear that the sales of the bananas are not in or into the United States. It would therefore appear that 802.51 is available because Company A is acquiring a foreign issuer that does not have total assets or annual net revenues in or into the United States in excess of \$63.4 million.

It would appear that 802.4 is also available. Company B, excluding Company B1, does not have sales in or into or assets in the United States in excess of \$63.4 million. As an acquisition of a foreign person without such assets or revenues, it is exempt under 802.51. The acquisition of Company B1 is potentially reportable because it has total revenues in excess of \$12.7 million. The fair market value of B1, however, is less than \$63.4 million. Company A is therefore not acquiring non-exempt assets valued in excess of \$63.4 million and 802.4 would appear to apply.

Thanks in advance.

[REDACTED]

[REDACTED]

AGREE -  
EXEMPT UNDER  
802.51

BM  
6/30/10

Please consider the environment before printing this email.

6/30/2010

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