

Verne, B. Michael

802.4

From: [REDACTED]
Sent: Wednesday, July 14, 2010 10:22 AM
To: Verne, B. Michael
Subject: RE: Aggregation

I have another aggregation scenario:

Acquisition of 20% of the interests in A LLC and 20% of the voting securities of B Corp. The UPE of A LLC and B Corp is C. A LLC has more than \$63.4 million of US assets and B Corp has no US assets and its foreign assets do not generate sales in or into the US. For purposes of 802.4, would you include the US assets of A LLC? I assume the answer is no because Rule 801.13(c)(2) provides that "An acquisition of noncorporate interests which does not confer control of the unincorporated entity is not aggregated with any other assets or voting securities which have been or are currently being acquired from the same acquired person."

Do you agree?

Thank you,

[REDACTED]

From: "Verne, B. Michael" <MVERNE@ftc.gov>
To: [REDACTED]
Date: 07/14/2010 09:40 AM
Subject: RE: Aggregation

Yes – under § 801.14 which requires aggregation of "all voting securities of the acquired person".

From: [REDACTED]
Sent: Tuesday, July 13, 2010 4:27 PM
To: Verne, B. Michael
Subject: Aggregation

Mike,

In an acquisition of voting securities (minority interests) in several issuers that have the same UPE, do we have to

I agree, but you don't have to use 801.13(c)(2). That rule determines the value of the transaction and says that you would not include the value of the 20% LLC interest. The reason you don't include the value of the LLC interest or the underlying assets of the LLC is in 802.4 itself. "The value of voting or non-voting securities of any other issuer or interests in any non-corporate entity **not included within** the acquired issuer does not count toward the \$50 million (as adjusted) limitation for non-exempt assets."

BM
7/14/10