

Verne, B. Michael

801.11

From: [REDACTED]
Sent: Friday, May 11, 2012 9:35 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Size of Person Inquiry

Hi, Mike:

In connection with a proposed transaction, our client is currently assessing its "total assets" for purposes of determining whether the size of persons test is satisfied. Our client's ultimate parent entity is a foreign company ("Parent") that has as its only asset an investment in its subsidiary (our client), which is also a foreign issuer ("Subsidiary"). Subsidiary has as its only assets cash and cash equivalents and minimal tangible assets, namely office equipment. Parent and Subsidiary issue separate (unconsolidated) annual audited financial statements. In addition, Subsidiary issues monthly management accounting reports, which are not audited and are prepared for the purpose of tracking expenses and receivables of the Subsidiary. Our questions concern: (i) the appropriate principles of consolidation of the Parent and Subsidiary financials and (ii) the appropriate financial statements which will be determinative of the total assets of the person of Parent. It is our understanding, pursuant to Section 801.11(b)(1) and numerous informal interpretations, that our client must restate the financials of the Parent to show the "nonduplicative" assets of all controlled entities (e.g., Subsidiary); employing generally accepted accounting principles this suggests that the investment by Parent in Subsidiary and the corresponding equity of the Subsidiary should be offset and eliminated for consolidation purpose as well as any receivables and payables that exist between Parent and Subsidiary. Regarding which statements to use as a basis for the creation of the restated financials, it would appear that we use the latest annual audited financials of the Parent and Subsidiary since it is not clear that the monthly management reports of the Subsidiary constitute "regularly-prepared" financials or, even if they do, there is no corresponding measure of Parent's financial position as of such date that could be used for proper consolidation.

Please confirm that you are in agreement with the above.

Thanks as always,

[REDACTED]

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You have it right on how to consolidate Parent and Subsidiary. On which financials to use, if the monthly reports of Subsidiary are deemed to be regularly prepared, it doesn't matter that they are not audited. Also, it doesn't matter that financials of Parent and Subsidiary that are being consolidated are not from the same period for purposes of assets. For example, you could use the 12/31 balance sheet for parent and a 3/31 balance sheet of Subsidiary to consolidate. I assume they do have the same annual report period for purposes of consolidating sales.

BM
5/11/12

K. WALSH CONCURS