

802.52

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, November 06, 2012 2:04 PM  
**To:** Verne, B. Michael  
**Cc:** Walsh, Kathryn  
**Subject:** Section 802.52 of HSR Rules of Practice

Dear Mike and Kate, in regard to this section of the rules I believe that the following is an exempt transaction:

Facts: foreign country A "controls" an entity within its borders (Entity A) and Entity A intends to acquire an interest in a foreign "issuer" incorporated in the same country and this issuer holds United States assets;

Section 802.52: this section exempts from reporting requirements a proposed acquisition where the ultimate parent entity of either the acquiring or acquired person is controlled by a foreign state, foreign government or agency thereof; and, the acquisition is of assets located within that foreign state of voting securities or non-corporate interests of an entity organized under the laws of that state.

HSR Analysis: The example provided under this section indicates that the acquired person is a foreign government that "controls" a foreign entity which holds assets with sales in or into the United States; the acquiring person is a United States person; and, the example notes that the proposed acquisition of these foreign assets is exempt "regardless" of the sales in or into the United States because the entity is controlled by a foreign government.

More directly on point are several informal opinions of the PNO: In opinion 0502002 a foreign government controlled Company A, incorporated in the same country; Company A proposed to acquire Company B which was incorporated in the same country and Company B holds the voting stock of a United States issuer with numerous assets. Thus, the acquisition of Company B would also indirectly include the acquisition of the United States issuer. The PNO agreed that the proposed acquisition was exempt under 802.52 even though it indirectly conveyed the United States issuer.

In opinion 0002011 the to be acquired entities were incorporated in and within the control of a foreign government and these entities held various United States issuers; the acquiring person intended to acquire the voting stock of the foreign entities and thus, indirectly acquire the voting stock of the United States issuers; the letter to the PNO noted that under section 802.52 this acquisition would be exempt noting that the "SBP goes on to explain that the foreign-governmental-corporations exemptions does extend to the **indirect acquisition** of United States assets and voting securities." (emphasis added). Thus, by purchasing directly the foreign entities controlled by the foreign government, the indirect acquisition of United States issuers is also covered by section 802.52. The PNO agreed with this conclusion.

I look forward to your analysis of this informal request and thank you for your time and consideration in this matter,

[REDACTED]

AGREE  
BM

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