

802.3  
802.9

Verne, B. Michael

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**From:** [REDACTED]  
**Sent:** Thursday, January 03, 2013 1:11 PM  
**To:** Verne, B. Michael  
**Subject:** 802.3

Hi Mike.

Happy New Year! I hope you are doing well.

I am writing to confirm the application of 16 CFR 802.4/802.3 to a transaction. Specifically Y is planning to acquire 100% of the voting securities of X, a non-publicly traded company, in exchange for \$100 million. X currently leases from Y real property on which reserves of carbon-based minerals are located and X's only operations and assets are related to extracting and selling carbon-based products from the real property leased from Y.

X currently holds many different types of equipment, including mobile equipment that could technically be used to extract or process carbon-based minerals from sites other than the property X leases from Y. So long as X uses such equipment exclusively on the properties leased from Y, may we take the position that such equipment qualifies as exempt "associated exploration or production assets" under Section 802.3(c)? In other words, is the requirement that such equipment or machinery be "integral and exclusive to current or future exploration or production activities associated with the carbon-based mineral reserves that are being acquired" satisfied so long as X is currently using such equipment and machinery in connection with the reserves on the leased property from Y, even if technically such equipment or machinery could also be used elsewhere?

Assuming this is the case, does the fact that Y is paying \$100 million for X's voting securities mean that the "less than \$500 million or \$200 million" thresholds in Sections 802.3 a or b would necessarily be satisfied and the exemption would necessarily apply? Or would Y need to determine the fair market value (FMV) of the reserves, the rights to reserves, and the associated exploration or production assets related to such reserves in order to determine whether 802.3 would be satisfied?

What if X also holds permits and consents related to operations at the leased property? Would such permits and consents be exempt assets under 802.3 (and therefore their value must be determined under 802.3) or would they be non-exempt assets whose FMV under 802.4 must be less than \$68.2 million for the 802.4/802.3 exemption to apply?

Thanks Mike!

Best regards,  
[REDACTED]

1 - I agree that the equipment and machinery being used on the leased property constitutes associated exploration or production assets.

2 - Y would need to do a fair market value to determine if the threshold is exceeded. Cannot use the \$100 million acquisition price.

3 - I agree that permits and consents must also be valued as part of the exempt assets under 802.3

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1/3/13

R WALSH CONCURS