

802.4
802.50
802.51

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, January 10, 2013 1:06 PM
To: Verne, B. Michael
Subject: Allocation of Consideration / Resultant Filing Fee

802.15 (d)

Mike

Please confirm whether this conclusion is correct:

1. Foreign Acquiring Person, but with sales in or into the US that make it subject to HSR, and US voting securities / assets are being acquired.
2. Transaction:
 - a. Acquisition from a US Acquired Person:
 - b. Acquired voting securities: Some US issuers, some foreign issuers (but US UPE).
 - c. Acquired assets: some US assets, some foreign
3. Total consideration, for easy math call it \$200 million US.
4. Allocation of consideration:
 - a. Allocated to US voting securities and assets: \$125 million
 - b. Allocated to Foreign voting securities and assets: \$75 million
5. Conclusion based on allocation:
 - a. HSR Reportable.
 - b. Filing Fee = \$45,000 (because the Reportable transaction's Size of Transaction is \$125 million), and filing fee is not \$125,000 (which \$125,000 would be the filing fee if only the \$200 million consideration was considered).
 - i. Stated differently: we are permitted to properly allocate the Consideration between Reportable and Non-Reportable elements of the overall transaction, and the filing fee is determined from only the Reportable Transaction.

Thanks and kind regards

[REDACTED]

Proper analysis:

1. Under 802.51 / 802.50 - determine total US assets of all of the foreign issuers. Determine total US sales of all foreign issuers and foreign assets (aggregated under 801.15(d)). If both of these do not exceed \$50 million (as adjusted), the foreign component is exempt and only the \$125 million allocated to the US portion is considered in determining the filing fee.
2. If either US assets or US sales attributable to the foreign component exceed \$50 million (as adjusted), use 802.4 for an alternate test. Take all of the foreign assets to be directly acquired and all of the foreign assets of the foreign issuers and all of the foreign assets of the US issuers (if any) and determine the total US sales of those assets. If the sales do not exceed \$50 million as adjusted, the foreign assets are exempt. Determine the portion of the acquisition price that would be attributable to those assets if they were all being acquired directly. If the remaining portion of the acquisition price does not exceed \$100 million (as adjusted) the filing fee would be \$45,000.
3. If neither of the above exempts the foreign component of the transaction, the value of the transaction is the total consideration of \$200 million and the filing fee would be \$125,000.

BW

1/10/13

KW CONCURS