

**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Monday, August 26, 2013 5:29 PM  
**To:** Verne, B. Michael  
**Subject:** RE: Secondary Acquisition

Mike,

I thought I would send an email in case that was easier for you.

My client, Company A, is a foreign person. It intends to make an acquisition of shares of Company B, a foreign issuer. Company A currently holds a minority of the shares of Company B. As a result of the acquisition of the additional Company B shares, Company A will acquire control over Company B. This would be a reportable transaction.

Rather than acquiring the shares of Company B directly, Company A is considering acquiring 100% of the shares of Company H, the sole shareholder of Company B. Company H is a holding company and it holds only a minority interest in Company B. There are bona fide corporate reasons for choosing this structure. If the shares in Company B are acquired indirectly through the direct acquisition of Company H, does that impact the HSR analysis? Interpretation 223 in the ABA Premerger Notification Practice Manual (4<sup>th</sup> Ed.) states that "in the context of an acquisition by a foreign person of a foreign issuer, any secondary acquisitions are exempt based on the principles of comity." Would that same general principle apply here? It would seem that the foreign/foreign nature of the transaction is what gives rise to the comity principle. Or does the fact Company A is indirectly acquiring control over Company B result in the secondary acquisition being reportable? Grateful for your guidance as usual.

Kind regards,  
[REDACTED]

*The comity exception does NOT APPLY WHEN THE ACQUIRING PERSON WILL HOLD A CONTROLLING INTEREST AS A RESULT OF THE SECONDARY ACQUISITION.*

**From:** [REDACTED]  
**Sent:** Monday, August 26, 2013 2:30 PM  
**To:** 'mverne@ftc.gov'  
**Subject:** Secondary Acquisition

*IF B HAS SUFFICIENT NEXUS WITH THE US, THE TRANSACTION IS REPORTABLE.*

*[Signature]*  
8/27/13

Hi Mike,

Hope you've been having a nice summer. I have a transaction involving a secondary acquisition that I was hoping to discuss with you. Would you have any availability this afternoon?

Kind regards,  
[REDACTED]