

801.15(d)
802.50
802.51

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, October 31, 2013 11:05 AM
To: Verne, B. Michael; Walsh, Kathryn
Subject: 802.51

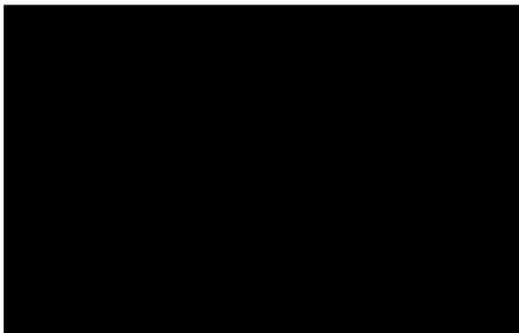
Mike and Kate,

We have a scenario where a newly formed foreign AIV ("AIV UPE") with no sales/assets is acquiring, through a U.S. LLC, and from a U.S. UPE (U.S. Company A"), i.) assets of U.S. Company A, ii.) assets of Foreign Company B, iii.) assets of Foreign Company C, and iv.) voting securities of Foreign Issuer A ("FI A), and v.) voting securities of FI B.

Can we take advantage of 802.51 considering that the acquiring entity is a U.S. LLC (100% owned by the Foreign AIV UPE) that is acquiring assets and voting securities from a U.S. UPE (but not the U.S. UPE itself)?

The aggregate sales of 1.) Foreign Company B and Foreign Company C in or into the U.S. are less than \$156m, and the aggregate assets of Foreign Company B and Foreign Company C in the U.S. are less than \$156m. Also, the aggregate sales of FI A and FI B in or into the U.S. are less than \$156m but more than \$70.9m, and the aggregate assets of FI A and FI B in the U.S. are less than \$156m. If FI A and FI B are exempt by 802.51, then s-o-t would be below \$283.6m and s-o-p would not be met.

Considering that AIV UPE is acquiring assets of U.S. Company A (and not U.S. Company A itself), and is separately acquiring from U.S. Company A the assets and voting securities of the foreign entities, in order to determine whether we meet the \$156m threshold of 802.51, do we need to aggregate the sales/assets of the Foreign Issuers with the sales/assets of the US and Foreign Companies, or do we treat them separately?

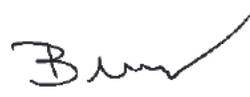


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For the sales in or into the US test: under 801.15(d) you would have to aggregate the US sales of any foreign assets being acquired from A, B and C with the US sales of FI A and FI B.

For the assets located in the US test: you would aggregate the value of any US assets held by FI A and FI B.

If either of these exceeds \$70.9 million, all of the assets and all of the voting securities are reportable.


10/31/13

KW CONCERN