

Gillis, Diana L.

From: Verne, B. Michael
Sent: Wednesday, December 17, 2014 10:41 AM
To: [REDACTED]; Walsh, Kathryn E.
Cc: [REDACTED]; Gillis, Diana L.; Whitehead, Nora
Subject: RE: Question re: 802.3 and 802.4

[REDACTED] - 802.4 is an asset based exemption, so you look at all of the underlying assets, regardless of the percentage of voting securities you are acquiring.

Here's the key sentence from 802.4:

An acquisition of voting securities of an issuer or non-corporate interests in an unincorporated entity whose assets together with those of all entities it controls consist or will consist of assets whose acquisition is exempt from the requirements of the Act...

From: [REDACTED]
Sent: Tuesday, December 16, 2014 4:26 PM
To: Walsh, Kathryn E.; Verne, B. Michael
Cc: [REDACTED]
Subject: Question re: 802.3 and 802.4

Mike and Kate –

I have a question regarding the interplay of 802.3 and 802.4.

Company A intends to acquire approximately 10% of Company B's voting securities for \$200 million. Company B is an oil and gas exploration and production company, whose assets consist of producing and non-producing oil and gas properties. Company B's producing properties have a fair market value greater than \$500 million, let's say \$1 billion. Please assume Company A does not qualify for the passive investor exemption.

When looking through per 802.4 to determine whether the 802.3 exemption applies here, can Company A "look through" to only a portion of Company B's assets? i.e., where Company A will be acquiring a minority interest in Company B, does the \$500 million threshold apply to (i) Company B's assets as a whole, in which case the 802.3 exemption does not apply, or (ii) only to the 10% of Company B that Company A will acquire, in which case the 802.3 exemption does apply (since 10% of \$1 billion is \$100 million)?

Thanks –

[REDACTED]

[REDACTED]

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