**Gillis, Diana L.**

**Subject:** RE: 802.50 and 805.51 Question

**From:** Walsh, Kathryn E.
**Sent:** Wednesday, June 17, 2015 9:46 AM
**To:** [redacted] Ferkingstad, James H.
**Subject:** RE: 802.50 and 805.51 Question

You would aggregate the sales into the U.S. of only the foreign assets being acquired (not the sales into the U.S. of the foreign assets not being acquired) plus the total sales into the U.S. of the three foreign issuers. The U.S. sales of the U.S. issuer are not included. If the total U.S. sales of the foreign assets and foreign issuers being acquired do not exceed $76.3 million in aggregate, you would only look to the value of the voting securities of the U.S. issuer to determine the size of transaction.

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**From:** [redacted]
**Sent:** Tuesday, June 16, 2015 5:00 PM
**To:** Walsh, Kathryn E.; Ferkingstad, James H.
**Subject:** 802.50 and 805.51 Question

Kate and Jim –

I hope this finds you well. I am concerned that the answer to this question is obvious, so concerned, in fact, that I feel maybe I am overlooking something in my question for the answer, obvious or otherwise. Here goes.

We are fairly certain that we will have a filing on behalf of a foreign UPE in a sizeable transaction, but, we have both 802.50 and 802.51 components to the transaction. The buyer is likely to be a domestic company.

Here is what the deal looks like –there are 6 different entities involved within the UPE – three entities will be selling voting securities and three will be selling assets. On the voting securities side, two entities are foreign issuers and one is a US issuer. On the asset side, all three entities are foreign. None of the foreign issuers or asset sellers hold assets in the US.

We believe 802.51(a)(2) requires us to aggregate the assets and sales in or into the US to determine whether the $76.3M threshold will be exceeded. As noted above, there are no US held assets, but there are sales in or into the US by all 5 foreign entities in the deal. However, as to the 3 foreign asset sellers, not all of their sales in or into the US are generated by the assets being sold in the transaction. In other words, let's say foreign asset seller 1 produces products A and B, 2 produced C and D and 3 produced E and F, and that only the assets relating to products A, C and E are being sold by 1, 2, and 3. For purposes of aggregation or otherwise, must we count, for purposes of the 802.51 aggregation rule, the sales in or into the US as to products B, D and F if those assets are not being transferred in the deal, or do we just count the sales in or into the US relating to products A, C and E, the assets of which are being transferred?

We ask this question under 802.51 because the language of (a) and (b) thereunder is slightly different than 802.50(a), where we have the same question as above but think the answer is that the sales in or into the US relating to products B, D and F are excluded from the calculus, because 802.50(a) says that the "acquisition of assets located outside the United States shall be exempt....unless the foreign assets the acquiring person ***would hold as a result of the acquisition*** generated sales in or into the U.. exceeding" $76.3M during the acquired person's most recent fiscal year.



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We think the highlighted language is what permits the exclusion of products B, D and F from the calculus, because the acquiring person would not hold the related assets "as a result of the acquisition" because those assets are being excluded.

We want to make sure we are exempting from the size of the deal calculation the right amounts under 802.50 and 802.51 so that we can be certain that the value of the US issuer being acquired is ascribed the correct amount for purposes of further analysis of whether the US piece of the deal exceeds the $76.3M threshold and thus requires a filing.

Are we right that the "would hold" rule in 802.50(a) allows us to exclude sales in or into the US relating to the products the assets relating to which are not being sold when doing the aggregation required under 802.51?

Any light you can shed on this would be most appreciated....

[redacted] made the following annotations: