From: Walsh, Kathryn E.
Sent: Friday, September 25, 2015 10:12 AM
To: [redacted]
Cc: Berg, Karen E.
Subject: RE: Acquisition of a Foreign Issuer

[redacted]:

We agree that as the transaction is currently structured, the acquisition of the 50% interest in the JV is exempt under 802.51.

As for the hypothetical of what would happen if the 50% interest in the JV was still in Target, the answer is that the acquisition of Target might be exempt under 802.4. As 802.4 is an asset-based test, you would look through to the assets of Target, including those of the JV. If the assets of the JV were exempt under 802.50, you would put those aside. Then you would look at the assets that are left and determine if what's left is reportable. If what's left is not reportable based on the FMV of these assets, the entire transaction is exempt. If what's left is reportable based on the FMV of these assets, the acquisition of Target, including its interest in the JV, is reportable at the full acquisition price.

See our 802.4 tipsheet: https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/steps-applying-section-8024

Kate

From: [redacted]
Sent: Wednesday, September 23, 2015 3:01 PM
To: Walsh, Kathryn E.
Subject: Acquisition of a Foreign Issuer

Kate--

I have a situation where a foreign client ("Client") intends to acquire a US corporation ("Target") from a holding company ("Seller"). Target has domestic operations as well as a 50% interest in a foreign corporation (the "JV"). Prior to the closing of the acquisition, Target will distribute to Seller the 50% interest in the JV. At the closing, Seller will sell all of the voting securities in the Target to a US subsidiary of the Client and all of the 50% interest in the JV to a foreign subsidiary of the Client.

The 50% interest in the JV is being distributed by Target and sold directly by Seller to a foreign subsidiary of the Client because of tax reasons relating to the Client.

The JV has total assets (irrespective of whether located within or outside of the US) less than $76.3 million and aggregate sales (irrespective of whether made in or into the US) less than $76.3 million. As I understand the HSR rules, the acquisition of the 50% interest in the JV would be exempt under 802.51. In addition, even if the 50% interest in the JV was not being distributed, this portion of the acquisition would still have been exempt through 802.4.

The purchase price is $93.5 million, which will be reduced by debt of about $10.5 million for a net purchase price to be paid of about $83 million. We do not yet know the allocation of the purchase price between the Target and the 50% interest in the JV, but, given that we are not far from the $76.3 million threshold, we wanted to confirm our analysis in case the allocation to the 50% interest in the JV is more than $6.7 million. Do you agree that the foregoing analysis is correct?

Thanks for your time.

Best regards,

[redacted]

[redacted]

[redacted]

[redacted]