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**From:** Berg, Karen E.  
**Sent:** Friday, June 24, 2016 9:35 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Question on Scheme of Arrangement structures and Foreign Securities Valuation

[REDACTED], we agree that acquisitions under Schemes of Arrangement are 801.30 transactions. As for valuation, refer to our tip sheet:

**For the Acquisition Price:** Use the exchange rate for the date of closing.

Even though the closing date will typically be in the future, if the exchange rate is relatively stable and can be estimated for the closing date, use an estimate and the acquisition price is considered determined. If the exchange rate is fluctuating such that it cannot be reasonably estimated for the closing date, the acquisition price is considered undetermined and a fair market valuation must be created.

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**From:** [REDACTED]  
**Sent:** Thursday, June 23, 2016 4:31 PM  
**To:** Berg, Karen E.  
**Cc:** [REDACTED]  
**Subject:** Question on Scheme of Arrangement structures and Foreign Securities Valuation

Karen: We have a couple of HSR question concerning the acquisition of a foreign issuer that is traded on the London Stock Exchange.

#### 801.30 and "Scheme of Arrangement" Deals.

The transaction at issue involves a foreign issuer who is making an all-cash offer to buy 100% of the outstanding voting securities of another foreign issuer in a public offer to the target issuer's shareholders. The transaction is intended to be implemented through a "scheme arrangement" structure under English law by which, among other things, the offer will be subject to approval from the court and the target shareholders.

My understanding is that the PNO views such transactions as covered under 801.30(a)(5) because they involves an acquisition of voting securities directly from the target shareholders, who are not included within the acquired person. I understand, however, that the PNO does not view scheme of arrangements as qualifying for the 15-day cash tender offer waiting period (e.g. Informal Interpretation 218 in the Premerger Notification Practice Manual; Informal Interpretation 0806017).

#### 801.10(a) and Valuation for Foreign-Currency-Denominated Deals

As noted above, the issuer is traded on the LSE and the transaction is denominated in British pounds. For valuation purposes, 801.10(a)(1) does not apply on its face because the LSE is not “a national securities exchange” or “authorized to be quoted in an interdealer quotation system of a national securities association registered with” the SEC. However, my understanding is that the PNO treats acquisitions of publicly traded foreign voting securities as nonetheless subject to the 801.10(a)(1) valuation method. Here, under that test, the US value of the acquisition price will fluctuate according to the exchange rate and is thus considered to be undetermined (e.g., Informal Interpretation 0409007). Because the closing will be more than 45-days from HSR filing, my understanding is that the Market Price is also considered to be undetermined, so that a FMV test is required per the Valuation Tip Sheet. If this is correct, I take it that the buyer can apply any reasonable method in determining FMV as is generally the case, though presumably an evaluation of market prices would be viewed as one reasonable method for such a valuation.

Please let me know if the above accurately summarizes the PNO's current views.

Thank you,

[REDACTED]

[REDACTED]

[REDACTED]