

From: Storm, Evan
Sent: Thursday, December 01, 2016 3:21 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 802.51(c)

[REDACTED]
We agree with your analysis.
Evan

From: [REDACTED]
Sent: Wednesday, November 30, 2016 6:53 PM
To: Storm, Evan; Gillis, Diana L.; Whitehead, Nora; Shaffer, Kristin; Walsh, Kathryn E.
Cc: [REDACTED]
Subject: 802.51(c)

Evan, Diana, Nora, Kate, Kristin,

We would like to confirm the applicability of the exemption under 16 C.F.R. 802.51(c) which we understand applies if:

- (1) Both acquiring and acquired persons are foreign;
- (2) The aggregate sales of the acquiring and acquired persons in or into the US are less than \$110 million (as adjusted, currently \$171.9 million) in their respective most recent fiscal years;
- (3) The aggregate total assets (fair market value) of the acquiring and acquired persons located in the US (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2)) are less than \$110 million (as adjusted, currently \$171.9 million); and
- (4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

In our case, Company A will acquire 100% of the voting shares of Company X. Company A and Company X are each their own ultimate parent entities. The following are true:

- (1) Both Company A and Company X qualify as foreign persons under the HSR rules.
- (2) The sales of Company A in or into the US are less than \$5 million. The sales of Company X in or into the US are more than \$78.2 million but less than \$108 million. Therefore, the aggregate sales of Company A and Company X in or into the US are less than \$171.9 million in 2015. Note we used average annual exchange rate to convert revenues to US\$.
- (3) Company A's board determines in good faith that the fair market value of its own US assets is a figure below \$78.2 million, and that the fair market value of Company X's US assets is a figure exceeding \$78.2 million, but in the aggregate the fair market value of the US assets of Company A plus the fair market value of the US assets of Company X is less than \$171.9 million. Note that we used the current exchange rate at the time of the fair market valuation to determine the fair market value of the US assets.
- (4) The transaction is valued at less than \$200 million (as adjusted, currently \$312.6 million).

Do you agree that Company A's acquisition of Company X is exempt from the HSR Act under 16 C.F.R. 802.51(c)?

Many thanks. Best, 