

From: [REDACTED]
To: [Walsh, Kathryn E.](#); [Berg, Karen E.](#); [Shaffer, Kristin](#); [Sheinberg, Samuel I.](#); [Whitehead, Nora](#); [Davis, Alpa D.](#)
Subject: FW: 802.51(b) Foreign Issuer
Date: Tuesday, March 27, 2018 1:14:24 PM

From: Carson, Timothy
Sent: Tuesday, March 27, 2018 1:14:18 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 802.51(b) Foreign Issuer

[REDACTED]

You will need to make the call as to whether your facts support a conclusion that the issuer does not have its principal offices in the United States.

Timothy (Ty) Carson

Bureau of Competition
Federal Trade Commission
400 7th Street, SW
Washington, DC 20024
202.326.2627
tcarson@ftc.gov

From: [REDACTED]
Sent: Tuesday, March 27, 2018 12:29 PM
To: Carson, Timothy
Cc: [REDACTED]
Subject: RE: 802.51(b) Foreign Issuer

Ty, sincere apologies for chasing, but we were hoping we could get your views on this today. Many thanks [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED]
Sent: Monday, March 26, 2018 3:11 PM
To: 'Carson, Timothy' <tcarson@ftc.gov>
Cc: [REDACTED]
[REDACTED]
Subject: RE: 802.51(b) Foreign Issuer

Thanks Ty. To clarify, our request was aimed at determining what we would consider the principal

place of Issuer's business. Here, Issuer has no officers, a Chinese parent, and directors who are not resident in the United States, but its principal subsidiary has its offices in the United States, which is why we are seeking your guidance on this question. Issuer has no offices anywhere, but uses its registered Luxembourg address on legal documents. Note the acquisition (investment) will not confer control – this is only a minority investment by a foreign person. Thanks so much. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Carson, Timothy [<mailto:tcarson@ftc.gov>]
Sent: Monday, March 26, 2018 2:34 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 802.51(b) Foreign Issuer

[REDACTED]

The term foreign issuer means an issuer which is not incorporated in the United States, is not organized under the laws of the United States and does not have its principal offices within the United States. See 801.1.

Does the issuer have its principal offices within the United States?

Regards,

Timothy (Ty) Carson

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From: [REDACTED]
Sent: Monday, March 26, 2018 11:28:27 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: 802.51(b) Foreign Issuer

Dear all,

Our client Foreign Person A is making a minority investment in voting shares of a Luxembourg issuer.

We are seeking to confirm that the seller ultimate parent entity (“UPE”) and its subsidiary, the entity into which our client is making an investment, (“Issuer”) both qualify as foreign for HSR purposes.

With respect to UPE (Foreign Person Analysis):

- UPE is the ultimate parent entity of Issuer;
- UPE’s headquarters address is in China and is organized under the laws of China;
- UPE is publicly listed on the Chinese stock exchange;
- The majority of UPE’s officers are Chinese citizens and residents;
- The majority of UPE’s board of directors are Chinese citizens and residents;
- All of UPE’s essential functions and operations are carried out in China; and
- UPE’s board meetings are held in China.

With respect to Issuer (Foreign Issuer Analysis):

- Issuer is a foreign-registered subsidiary of a Chinese entity (UPE);
- Issuer is organized under the laws of Luxembourg;
- Issuer has no officers;
- All of Issuer’s directors are non-U.S. citizens;
- All of Issuer’s directors are non-U.S. residents;
- All of Issuer’s binding documents and corporate decisions are principally made in China;
- The only revenues generated within Issuer come from operation of its U.S. subsidiary and its other direct and indirect subsidiaries located around the world.

We believe under these circumstances both UPE and Issuer, the entity into which our client is making an investment, are not organized under the laws of the U.S. and do not have their principal offices in the U.S. We would appreciate if you could please confirm whether you agree with our assessment.

Many thanks.

Best,

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[Redacted signature block]