

802.51

ITEM 5

Verne, Michael

From: [REDACTED]
Sent: Friday, August 08, 2003 2:09 PM
To: Verne, Michael
Subject: Further Questions on Deal under Japan Exchange Laws

Hi Mike,

I want to follow up with you again on some additional questions that have arisen in the deal we are doing under the new Japan Exchange laws. I have spoken with you before on this matter and you have spoken with [REDACTED] a number of times as well. As you may recall both acquired and acquiring persons are foreign companies with some US subsidiaries and sales into the US.

① My first question relates to Japanese trading companies and so called indirect sales to the US. The acquiring person (or a subsidiary within it) has sales of replacement parts and spare parts to a Japanese distributor/trading company in Japan. The trading company in turn sells to end users in the US. The acquiring person has no say over price or purchase terms. If the end user asks the acquiring person for such replacement or spare parts, the acquiring person directs the end user to the trading company in Japan. Would these be considered part of sales into the US under the \$50m limit of 802.51? Or included as revenues under Item 5?

② Second, and more complicated, for purposes of determining whether the acquired person has \$50m in sales into the US under 802.51, do you include internal sales by the acquired person to its subsidiaries in the US and also include the subsequent sales by the subsidiaries in the US to end users in the US? Does your answer change if the subsidiaries in the US somehow change the parts purchased from the parent - the acquired person (ie whether the parts are repackaged, or included in the products sold by the subsidiaries in the US or otherwise remanufactured before sale by the subsidiaries in the US)?

Please let me know if you need any additional information. I have tried to explain the facts as I understand them but I can always request more information from the client.

Thank you for your continued assistance. Have a good weekend.

[REDACTED]

[REDACTED]

Sent from my wireless

① NOT SALES INTO U.S. OR ITEM 5 REVENUE IF DISTRIBUTOR IS NOT WITHIN THE SAME PERSON.

② INTERCOMPANY TRANSFERS ARE SALES INTO U.S., BUT DON'T DOUBLE COUNT.

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

For additional information, please visit our website at [REDACTED]

B. Michael
8/12/02