802.51

[redacted]

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February 20, 2004

VIA EMAIL (mverne@ftc.gov)

Michael B. Verne
Pre-merger Notification Office
Federal Trade Commission
600n Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Michael:

I am writing to follow up on our discussion today regarding what is properly regarded as making "sales in or into the United States" for purposes of determining whether the $50 million exemption safe harbor in 16 CFR §802.51(b) is exceeded. We are dealing with a situation where a foreign issuer the shares of which are being acquired in an otherwise reportable transaction has revenues in the United States that slightly exceed $50 million. Those revenues, however, include a substantial payment for a cancellation charge. No products or services were provided in exchange for this charge, and thus this payment did not pertain to any sales made in or into the United States. The cancellation charge is, in effect, akin to a penalty or liquidated damages. Under these circumstances you agreed that it is reasonable to conclude that sums collected as cancellation payments, where there were no products or services provided in exchange for such payments, are not regarded as sales made in or into the United States for purposes of 16 CFR §802.51 and thus do not need to be included in determining whether the $50 million exemption safe harbor is exceeded.

Please let me know as soon as practicable if you disagree with any of the above. Thank you in advance.

Sincerely,

[redacted]

AGREE.
2/20/04

[redacted]