

802.50
802.51

Verne, B. Michael

From: [REDACTED]
Sent: Friday, February 27, 2004 8:57 AM
To: Verne, B. Michael
Subject: 802.50/802.51 question

Dear Mike:

I believe that following my January 22, 2003 email below you confirmed that this is the present position of the PNO, and that the same result would apply if the various targets involved purchases of voting securities rather than assets - as I saw the informal interpretation, you noted that "U.S. sales attributable to U.S. assets or issuers are not included in determining whether the \$50 million limitation in 802.50 and 802.51 is exceeded".

U.S. & FOREIGN ISSUERS ON ASSETS BEING ACQUIRED FROM SAME UPE.

← AGREE

My current inquiry - which is basically whether your quoted statement above only clearly applies when the US issuers or US assets are being acquired directly, rather than through a holding company - may seem obvious, but is designed to make sure that I do not give your interpretation an overly broad reading. In the direct purchase scenario, exceptions to aggregation rules seem to kick in to give your statement full effect. However, in the holding company scenario, I'm assuming we do in fact have to attribute the sales from US issuers or US assets upward to the holding company (except perhaps if Y is a newly-formed entity, and we are talking contributions of assets rather than issuers).

I think we can clarify this through the following questions, all involving a - Y IS FOREIGN purchase by X of Y's voting securities:

1. Would all these sales count toward the \$50 million "sales in or into the US" threshold in 802.51? **YES**
2. Same result (802.51 threshold exceeded, due to attribution upward) if the listed revenues were attributable to a US subsidiary and two foreign subsidiaries of Y? **YES**
3. If Y is a corporate entity being newly formed in connection with this deal under 801.40, from our recent discussions I believe the outcome would depend on whether assets or subsidiaries were being contributed -- if the US plant was contributed as an asset, it would not count, but if it was held by an existing US subsidiary the stock of which was contributed, it would count. Is this correct? **YES**
4. Again, Y is a newly formed entity, but so is a US subsidiary owning the US plant. In other words, Y's parent company puts the US plant into a newly formed US holding company, which it then contributes to a newly formed Y, the stock of which is then sold to X. It would seem that under the rule covered in #3, the newly formed US subsidiary would not have "inherited" the plant's sales for the prior year, and if this is all in connection with the same transaction, I would hope that subsequent contribution to Y would not result in it being suddenly attributed sales it did not inherit one step earlier. Is it correct that the US plant's sales also would not count here? **YES**

ALSO IF SUBSTANTIALLY ALL OF THE ASSETS OF AN ENTITY ARE CONTRIBUTED.

N. OUKA COMMENTS.

B. Michael Verne
2/27/04