

802.51

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, December 02, 2004 3:55 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR question

Hi Mike - I am hoping for your guidance on the following fact pattern:

Company A and Company B are planning to form a 50/50 Jt. Venture - JV X. Company A and Company B will contribute European assets to JV X. JV X will conduct business through two foreign LLC's (Dutch Co - which will be incorporated in the Netherlands and Swiss Co - which will be incorporated in Switzerland)

Company A is a Canadian issuer which was formed under the Canadian Business Corp. Act. Company A has about 1/3 of its offices in Canada, 1/3 in the US and 1/3 in Europe. Currently, many of the officers and directors are in the US.

Here are my questions:

1. Is it safe to assume that Company A is a "foreign person"? The regs say that a foreign person has to be a foreign issuer and its principal offices can not be in the US.
2. Assuming that both Company A and Company B are foreign persons:
 - a) Under 802.51(b), when calculating the \$50 million asset and revenue numbers, would we look only to the assets being contributed to the JV (which is the issuer being acquired)?
 - b) Under 802.51(c) (2), in calculating the \$110 million in or into the US, do you look at the UPE of Company A and Company B?

I look forward to hearing from you. Thanks

[REDACTED]

[REDACTED]

[REDACTED]

1. MUST DETERMINE WHICH OFFICE IS PRINCIPAL OFFICE.

2. a. - YES

b. - YES

B. Michael

12/2/04