

802.7
802.50
801.15(d)

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Sent: Friday, January 27, 2006 2:37 PM
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Subject: HSR question for you

X acquires all of the interests in a partnership that is organized and has its principal offices outside the US. The partnership has some US assets, with FMV of less than \$56.7 million. The partnership also has some sales in or into the US, but less than \$56.7 million of such sales. Is this transaction potentially exempt under 802.51? Is that because the foreign partnership is a "foreign issuer" for purposes of that rule? Do I have to think about 802.50 (because X will hold foreign assets as a result of acquiring all of the interests in the partnership)? Or is this an "indirect" acquisition of the assets, and therefore not an acquisition of assets at all for HSR Act purposes, and therefore not an occasion for invoking 802.50 at all?

Second question:

Suppose that in the same transaction X also buys from the same acquired person all of the stock of foreign issuer corporation that, like the partnership, has some (but not as much as \$56.7 million worth) sales in or into the US and holds some US assets (with a FMV less than \$56.7 million). By itself, acquisition of this stock would be exempt under 802.51. But what do I do about the language in 801.15(d), which could be read to require aggregation of the sales in or into the US by the corporation and the partnership, and possibly to require aggregation of the FMV of the US assets held by the two entities. If aggregation is required, what is the language that invokes either 802.50 or 802.51 when a non-corporate (foreign) entity is being acquired?

[REDACTED]

It would be analyzed under 802.4. If the direct acquisition of the underlying foreign assets would be exempt under 802.50 and the remaining US assets were less than \$56.7 MM, then the acquisition of all of the partnership interests would be exempt.

801.15(d) does require aggregation of the US sales and US assets. Again, it is 802.4 that invokes 802.50 for the partnership.

B. Michael
1/27/06