

801.15(d)

Verne, B. Michael

From: [Redacted]
Sent: Tuesday, March 21, 2006 10:02 AM
To: Verne, B. Michael
Subject: size of person & 802.51

Dear Mike,

I have a question regarding whether the size of person test can apply to a transaction, a portion of which is exempt under 802.51.

In this transaction, a non-US entity is directly acquiring foreign voting securities and US voting securities of a foreign UPE. The total value of the transaction is over \$226.8 million. However, the foreign portion is likely to be exempt under 802.51, as the foreign entities to be acquired do not have US assets or sales of \$56.7 million or more.

Thus, the only reportable portion of the transaction is the acquisition of US voting securities, which is valued at over \$56.7 million but perhaps at less than \$226.8 million. The acquiring entity will likely be newly-formed and not controlled by any other entity, and thus may not meet the size of person test.

Could this transaction be exempt due to not meeting the size of person test in 7A(a)(2)(B)? Should I be looking at the value of the entire transaction, or just the reportable (US) part? The definition of "hold" seems to say that for the size of person test in 7A(a)(2)(B), one must look at the value of the entire transaction, not just the reportable part, but I wanted to check.

Thanks,



LOOK ONLY AT REPORTABLE PORTION. 801.15(d) SAYS YOU DON'T HOLD THE V/S THAT ARE EXEMPT UNDER 802.51.
B. Michael
3/21/06

This message and any attachment are confidential and may be privileged or otherwise protected from disclosure. If you are not the intended recipient, please telephone or email the sender and delete this message and any attachment from your system. If you are not the intended recipient you must not copy this message or attachment or disclose the contents to any other person.