802.4
802.50

Verne, B. Michael

From: [redacted]
Sent: Wednesday, May 17, 2006 4:42 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: HSR Discussion 802.4 and 802.50

Mike, thank you for taking the time to speak with [redacted] and me today. Below is a summary of the fact pattern we discussed and our request for confirmation of the analysis.

Fact Pattern: US Company A ("Acquirer") intends to acquire, pursuant to a Stock Purchase Agreement, 100% of the voting securities of US Company B ("Target") for a purchase price in excess of $56.7 million. Each of Acquirer and Target satisfy the HSR size of person test. Target, for its most recently completed fiscal year, had total annual sales of more than $56.7 million in or into the US and consolidated total assets of more than $56.7 million.

While most of the operations of Target are US based, Target has some non-US subsidiaries servicing its sales operations in certain countries. These non-US assets of Target did not generate more than $56.7 million in sales in or into the US during the last fiscal year.

HSR Issue: Does 802.4, read in conjunction with 802.50, apply to make the transaction non-reportable if the fair market value of Target's US assets is below $56.7 million?

HSR Analysis: As amended in April 2005, section 802.4 provides in relevant part: "An acquisition of voting securities of an issuer...whose assets together with those of all entities it controls...consist of assets whose acquisition is exempt from the requirements of the Act pursuant to...this part 802...is exempt from the reporting requirements if the acquired issuer...and all entities it controls do not hold non-exempt assets with an aggregate fair market value of more than [$56.7M]."

The assets of Target located outside of the United States and held by non-US entities would be exempt assets under 802.50 because these non-US assets did not generate more than $56.7 million of sales in or into the United States in Target's most recent fiscal year. Assuming that the Acquirer's Board of Directors or its designee determines, in accordance with 801.10(c)(3), that the fair market value of Target's non-exempt assets (i.e., its US assets) is less than $56.7 million, the transaction would be exempt from reporting under Section 802.4.

Please let us know if this accurately reflects our discussion.

Regards,

[redacted]

Agree.
B[illegible]
5/17/06

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To ensure compliance with requirements imposed by the IRS, [redacted] informs you