802.4
801.21

Verne, B. Michael

From: [redacted]
Sent: Wednesday, March 28, 2007 1:10 PM
To: Verne, B. Michael
Subject: Query (16690-00219)

Mike:

I am assessing the applicability of 16 C.F.R. § 802.4 to a particular situation. The US assets remaining after exempting non-US assets under 16 C.F.R. § 802.50 include at least two categories I think we can exclude:

Cash and cash equivalents: Under 16 C.F.R. § 801.21

Cash -- restricted: This represents cash collected by the acquired entity on behalf of its customers, essentially in the form of prepayments against contract performance. There is a directly offsetting liability in the same amount, presumably on the basis that if the company was unable to complete performance, the prepayments would be refundable to the customers. I believe this is another form of "cash equivalent" reasonably treated as exempt under 16 C.F.R. § 801.21, in part to be consistent with how I understand you have treated "unearned premiums" in the insurance context. Even if this "asset" has to be included in the valuation (and recognizing that liabilities are irrelevant to a "total asset" calculation for "size" purposes), in the fair market valuation context I would expect that the directly and fully offsetting liability in this case makes it reasonable to assign this "asset" zero value.

The most recent balance sheet (at year end 12/31/06, awaiting auditors' final approval) of the target group showing US assets reveals that after netting out the above two figures, the "total assets" in the US are valued below $59.8 million. I realize the acquiring person must make a fair market valuation that could differ from book value, but given the relatively recent nature of this balance sheet I believe it would be reasonable for the acquiring person to base a fair market valuation on those figures, absent manifest evidence the values are understated.

Alternatively, applying an EBITDA multiple deemed appropriate for a fair market valuation of the US assets also results in a figure below $59.8 million, but because it is based on earnings, it also effectively excludes the above two categories. (The multiple is also lower than that which has been applied to the business as a whole, but we expect the fair market valuation to conclude that this is reasonable given particular attributes of the US business distinguishing it from non-US elements of the target group.)

We might have other arguments to explore as to goodwill (described to us as the excess of cost over fair value of certain acquired businesses), but if you agree with the ability to exclude the above two categories this point becomes unnecessary.

Please advise if you disagree with any of the foregoing, and as always thank you for your assistance.

Brgds,

[redacted]

AGREE THESE SHOULD BE TREATED AS CASH EQUIVALENTS

3/28/07

25