802.51

Verne, B. Michael

From: [redacted]
Sent: Friday, September 07, 2007 11:16 AM
To: Verne, B. Michael
Cc: [redacted]
Subject: Question re: 802.51

Hi, Mike –
We are hoping to get your help with regard to the applicability of the foreign issuer exemption contained in 16 C.F.R. 802.51 – particularly what constitutes sales in or into the U.S. - based on the following facts:

Company A, a U.S. person, is acquiring slightly less than a 25% interest in the voting securities of Company B, a foreign person which is its own ultimate parent entity, for a purchase price in excess of $59.8 million. Assume that the size of parties test is met. Also assume that Company B's assets – together with those of its controlled entities – located in the U.S. are less than $59.8 million.

Company B, which operates in the investment management and financial services business, has a number of subsidiaries: (i) Subsidiary B1 is a U.S. corporation which is registered as an investment adviser with the Securities and Exchange Commission ("SEC"); (ii) Subsidiary B2 is a U.S. Corporation and a member of FINRA (f/k/a NASD) which is registered with the SEC as a broker-dealer, and (iii) Subsidiary B3 is incorporated outside of the U.S. and its headquarters address and only offices are outside of the U.S., though it is registered with the SEC as an investment adviser.

Subsidiary B1 provides investment advisory services to mutual funds, institutional and individual clients based in the U.S. and Canada and receives an advisory fee in return (the "B1 Revenues"). Subsidiary B2 earns minimal revenues (the "B2 Revenues), and primarily exists only for sales and marketing purposes within the U.S. Despite the fact that all investment decisions with respect to portfolios managed by Subsidiary B1 are made outside of the U.S., we believe that the totality of the B1 Revenues – less than $25 million in 2006 – would be deemed to be sales in or into the U.S. for purposes of 16 C.F.R. 802.51. Similarly, we believe that, by virtue of Subsidiary B2's being a U.S. establishment, any B2 Revenues in 2006 would be counted as sales in or into the U.S. for purposes of determining whether the limitation set forth in 16 C.F.R. 802.51 is crossed. Please let us know if you disagree.

The harder question is with respect to the revenues of Subsidiary B3. Although this entity primarily provides investment advisory services to foreign clients, there are likely some U.S. clients which invest in the offshore pooled investment vehicles advised by Subsidiary B3 (either directly or through a U.S. feeder fund, which feeder funds are administered by third parties not under the control of Company B). All investment decisions with respect to such pooled investment vehicles are made outside of the U.S., no funds flow through a controlled U.S. establishment of Company B, and the offshore pooled investment vehicles invest primarily in non-U.S. securities. Do you agree that any such advisory revenues would not be deemed to be U.S. sales for purposes of 16 C.F.R. 802.51?

Many thanks for your help,
[redacted]

Agree
B
9/7/07

9/7/2007

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