

802.51

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Wednesday, March 19, 2008 10:20 AM  
**To:** Verne, B. Michael  
**Subject:** Question about assessing foreign versus US sales under 802.51

Mike,

I have a question relating to whether certain sales do not qualify as sales in or into the US under Rule 802.51. The target is a foreign issuer that sells furniture manufactured in China ("Target"). A significant portion of the sales are to US customers. Target's only US assets are certain US IP rights relating to the furniture. These US assets have a fair market value of less than \$63.1 million. The furniture is manufactured by three joint ventures in China which the Target does not control. Prior to sale to its customers, Target takes title to the furniture at port in China. Title and risk of loss is then transferred to the ultimate buyers while the furniture is still in China once the furniture is loaded onto container ships. Target has a relationship with a sales representative that is affiliated with Target but controlled by a separate UPE from Target. The issuer holding the sales representative is being sold to the same buyer as is acquiring Target through a separate purchase agreement. This sales representative acts as the sales agent solely for Target in various regions including the US. These facts are similar to those in PNO Manual opinion 215 (4th ed.), which found sales in similar circumstances not to be US sales. I also understand that although the products may be designed with specific customers in mind or to include features requested by specific customers, the products are not specifically designed for the US market as in the example in PNO Manual opinion 216. In fact, the products are designed to meet more stringent standards than those specified by the relevant US trade association.

Other facts that may be relevant are that: (i) negotiations with customers are carried out by the sales representative in consultation with the Target's office in China and no sales are final without the approval of the pricing, terms and conditions of the proposed sale by a non-US subsidiary of Target; and (ii) a non-US subsidiary of Target executes the sales agreements outside the US. I believe that on these facts the sales of furniture in China by Target to US customers are not US sales. Please let me know if you agree.

Many thanks,

[REDACTED]

[REDACTED]

AGREE -  
BM  
3/19/08

JA