

Verne, B. Michael

801.1(e)

From: [REDACTED]
Sent: Thursday, March 27, 2008 9:38 AM
To: Verne, B. Michael
Subject: HSR Advice

Mike,

We are seeking informal HSR advice on the issue of assessing whether ISSUER A, described below, is a foreign issuer pursuant to 801.1(e).

ISSUER A is not incorporated in the U.S. or otherwise organized under U.S. law (although ISSUER A's shares are publicly traded on a U.S. stock exchange). In accordance with the three part test set out in 801.1(e), the sole issue that we need to confirm is that ISSUER A's "principal offices" are located outside of the U.S.

PARENT A, a foreign company, is the ultimate parent entity of ISSUER A. ISSUER A also is incorporated under the laws of the same foreign country and its global worldwide headquarters are located there as well (currently about 140 employees are based in that office and next year it is expected that about 260 employees will be located there). ISSUER A also maintains a U.S. headquarters, which is larger than the Swiss headquarters in terms of size and number of employees. Each of the three corporate officers of ISSUER A maintains an office in both the U.S. and its foreign headquarters locations. The vast majority of documents that require signatures that are binding upon ISSUER A are executed in the foreign headquarters.

ISSUER A generates more than half of its revenue outside of the U.S. and derives more than half of its profits outside the U.S. ISSUER A's business is based largely on technology/intangible assets that are not reflected on its balance sheet. On a fair market value basis, more than half the value of the company is held outside the U.S.

ISSUER A's Board is comprised by a majority of non-U.S. directors. Last year ISSUER A conducted three out of four Board meetings outside the U.S. (and none at its US headquarters) , with similar plans for 2008. Thereafter, no Board meetings are expected to take place in the U.S. for the next few years.


We greatly appreciate your advice on this issue.

Best regards,

[REDACTED]

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I would say that issuer A is a foreign issuer. The location of the directors and board meeting is really irrelevant in determining principal offices. The location of the officers is key. Since they have offices both in the U.S. and outside of the U.S., which are their principal offices needs to be determined. Your representation that key activities such as signing binding documents occur outside of the U.S. leads me to the conclusion that the foreign offices would be the principal offices.


3/27/08