

802.51

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, June 22, 2010 12:32 PM
To: Verne, B. Michael
Subject: HSR question regarding 802.51(b)

Mike,

I have questions about 16 CFR section 802.51(b) and the requirement for "control" to be obtained by the Acquiring Person for a foreign persons' acquisition of the shares of a foreign issuer to be potentially reportable.

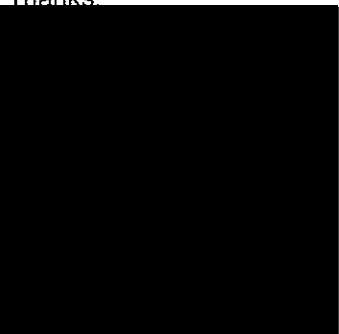
- (1) Is there any "device for avoidance" issue if a foreign acquiring person:
 - (a) acquires voting securities of a foreign issuer up to but not over 50% (and therefore not acquiring control) as an initial step, and then
 - (b) files HSR prior to acquiring an amount of voting securities that gives it control (over 50% of the voting securities) of the foreign issuer?

Assume that the acquisition in the first step (the acquisition of a non-controlling amount of voting securities of a foreign issuer) is valued over \$63.4 million and that the foreign issuer has the requisite US assets such that 802.51(b) would NOT apply to an acquisition of control.

- (2) Would it matter if a single agreement provided for the acquisition of the shares included in both steps?
- (3) If the foreign acquiring person filed an HSR for an acquisition of control prior to acquiring any voting securities of the foreign issuer, could it acquire up to but below 50% of the foreign issuer's voting securities during the pendency of the HSR waiting period?

ABA Premerger Notification Practice Manual Interpretation 231 suggests that all three of the above would be allowed, but I wanted to confirm that this is still the position of the PNO.

Thanks,



"AGREE"
BW
6/22/10