802.50
802.51

Verne, B. Michael

From: [redacted]
Sent: Monday, November 01, 2010 6:32 PM
To: Verne, B. Michael
Subject: Question

Mike – I hope all is well with you.

I have concluded that a transaction that I have been reviewing is not reportable and I would appreciate your view. I have outlined the facts and my thoughts below:

- There is a consortium of parties each of whom has an interest in a production facility in Canada.
- Each consortium member's interest in the facility and its operations is comprised of two inter-related components: a shareholding interest in a corporation that manages and operates the production facility on behalf of consortium members; and a corresponding undivided ownership interest in the production facility itself (the shareholding and undivided ownership interests are collectively referred to in the consortium agreement as a member's "Interest"). Each consortium member has the right to send raw materials to be processed at the facility on its behalf; once the materials have been processed, finished goods are returned to the member.
- Given the above structure, an acquisition of any Interest necessarily involves both the acquisition of a shareholding interest and the acquisition of the corresponding undivided ownership interest.
- The proposed acquisition involves the acquisition by one of the existing consortium members, A, of a portion of the Interest of another consortium member. A's Interest, post-acquisition, would be in the range of 10%-15%.
- I believe the acquisition of the undivided ownership interest in the facility should be viewed as an acquisition of interests in an unincorporated entity, and, since A will not acquire control of the entity, the acquisition would not trigger HSR reporting. However, even if A's acquisition were treated as the acquisition of assets, I believe it would be an exempt transaction under Section 802.50 because the assets are located in Canada and all revenues are generated in Canada.
- Finally, if the acquisition of the undivided interest in the facility is exempt from HSR reporting, the acquisition of the shareholding interest will not be reportable because Section 802.50 will exempt it as well (in addition, it is likely that the value of the shares that will be held by A as a result of the transaction will be below the $63.4 million threshold).

Thank you for your assistance. If you have any questions, please let me know.

Best regards,

[redacted]

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The undivided interest in the production facility would not be treated as an acquisition of non-corporate interests but rather as the acquisition of an asset (see #57 PNPM 4th ed.). I do agree that it would be exempt under 802.50 because the facility is located in Canada and all revenues are generated in Canada. The shareholding interest would be exempt under 802.51.

B

11/4/10