802.51

**Verne, B. Michael**

**From:** [redacted]
**Sent:** Monday, April 18, 2011 2:26 PM
**To:** Verne, B. Michael
**Cc:** [redacted]
**Subject:** Rules 802.4, 802.51 and 802.50

I am writing to you to see if you agree with our view that a filing will not be required based upon the facts as set forth below. For the purpose of this email please assume all the HSR size thresholds (size of persons and size of transaction) are met.

Our client (the "Buyer"), a corporation formed under the laws of Canada, will be purchasing from seller ("Seller") both the assets of a corporation formed under the laws of Delaware (U.S. Corp.") and the voting securities of a corporation formed under laws of Hong Kong ("HK Corp."). The aggregate purchase price is approximately ~~$150~~ 78 million. HK Corp., including all entities it controls, during its most recent fiscal year did not (i) hold assets in the U.S. having an aggregate total value of $66 million or more and (ii) have aggregate sales (including intercompany sales) in or into the U.S. of $66 million or more.

I have reviewed several informal staff opinions, including Informal Staff Opinions Nos. 0503018 as well as example number three of Rule 802.51. It is our understanding that an acquisition of voting securities of a foreign entity would be exempt from the filing requirements of the HSR Act under Rule 802.51(b) if the Buyer was not acquiring control over a foreign issuer (including all entities controlled by that foreign issuer) which either held assets located in the United States having an aggregate total value of over $66 million or made aggregate sales in or into the United States of over $66 million in its most recent fiscal year. In addition, it is also our understanding that in an acquisition of multiple entities under Rule 802.4 a purchaser can exclude from the calculation of the $66 million threshold applicable to non-exempt assets the value of voting securities of an issuer whose underlying assets, together with those of all entities it controls, consist of assets whose acquisition would be exempt from the requirements of the HSR Act pursuant to Section 7A(c) of the Clayton Act or part 802 of the HSR rules. In addition it is also our understanding that we would not aggregate the U.S. sales and assets of the U.S. Corp. with any U.S. sales or assets of HK Corp when determining if the dollar limitations contained in Rule 802.51(b) were exceeded.

Based upon the facts as stated above, we believe in accordance with Rules 802.4 and 802.51(b) Purchaser should be able to exclude from the calculation of the size of the transaction the value of the transaction attributable to the purchase of the voting securities of HK Corp. In our transaction, although the aggregate purchase price is approximately $78 million, the acquisition price attributable to the assets of U.S. Corp., calculated in accordance with Rule 801.10(b), will result in the Buyer holding less than $66 million of the acquired person's assets.

In the alternative, we believe that the transaction could also qualify as exempt under a combination of Rules 802.50 and 802.4 because the assets underlying HK Corp. do not generate $66 million of sales in or into the US (and therefore would be exempt under 802.50) and because the US assets being conveyed have a value of less than $66 million. See FTC Premerger Office, "Steps for Applying Section 802.4"

We believe under the facts and circumstances as described above the filing of a Premerger

Notification Form under the HSR Act would not be necessary with respect to Purchaser's acquisition of the assets of U.S. Corp. and the voting securities of HK Corp. We would appreciate knowing whether you concur or do not concur with our analysis.

We thank you for your time.

AGREE -
NOT REPORTABLE
4/19/11

[redacted]

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