

Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, June 21, 2023 10:43 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle
Subject: FW: Intra-Person transfers and Rules 802.51/802.4

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Wednesday, June 21, 2023 10:42:42 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Intra-Person transfers and Rules 802.51/802.4

We agree.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Tuesday, June 20, 2023 7:22 AM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>
Subject: FW: Intra-Person transfers and Rules 802.51/802.4

From: [REDACTED]
Sent: Tuesday, June 20, 2023 7:21:15 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Intra-Person transfers and Rules 802.51/802.4

Dear All:

I am writing to confirm the application of 802.51/802.4 to certain scenarios. (See PNPM # 149 and 151).

Assume that A is acquiring foreign Corporation B.

B manufactures products outside the US and transfers them to a subsidiary/distribution arm in the US at a transfer price. The US operation then sells the products to US customers (and some non-US customers) at the distribution/wholesale price.

In 2022, the revenue derived by B's foreign operation from the transfer of manufactured products from B to the US subsidiary was \$60 million.

Assume that the US subsidiary's sales of these products were either, in scenario A, \$100 million or, in Scenario B, \$115 million. If one were to combine the transfer revenues plus the US resale revenues, the total sales would exceed \$111.4 million.

I believe that applying Rules 802.51 and 802.4, one would exclude the value of the foreign assets being acquired as they did not generate sales in or into the US in excess of \$111.4 million in Scenario A. The same conclusion is reached in Scenario B unless one is required to attribute the \$115 million in revenue that the US subsidiary generated in scenario B from the sale of these products. Note that PNPM #151 states that one should include transfers of

manufactured products from a foreign manufacturer to a US controlled entity only to the extent the US entity then exports to foreign customers, to avoid double counting.
Next, to determine if a filing were required, one would have to determine the fair market value of the US assets being acquired, under Rule 802.4.

Do you agree?

Thank you.

[Redacted]

[Redacted]