

801.11  
801.2(e)

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To: HQ.DGMAL2(MVERNE)  
Date: Mon, Mar 20, 2000 10:52 AM  
Subject: 801.2(e)

For purposes of determining the size of person of an individual shareholder who has to make an 801.2(e) filing, is the value of the voting securities the individual receives deemed to be included in the measure of the assets held by the person or do you make the determination based on the shareholder's total assets prior to the acquisition on which the shareholder will be filing?

For example, A merges into B. S, a shareholder of A, will receive \$15.1 million of B's voting securities as a result of the transaction. B paid a substantial premium over market for A's shares. Prior to S's gaining beneficial ownership of the B shares at the expiration of the waiting period, S's total assets (based on the trading value of A's shares - S has no other assets) are only \$9.5 million. Is S a \$10 million dollar person for purposes of filing under 801.2(e)?

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NO - S MUST PREPARE A FAS-FINRA BALANCE SHEET, VALUING ITS STOCK IN A BY ANY ACCEPTABLE ACCOUNTING METHOD. THE VALUE OF B STOCK BEING ACQUIRED DETERMINES THE SIZE OF TRANSACTION. IT HAS NO BEARING ON SIZE OF PERSON.

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3/21/00