

801.10(c)(1)

From: [Redacted]  
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Date: 10/3/01 2:06PM  
Subject: Another HSR question

A is a company whose stock is publicly traded. A will acquire all of the stock of Company B, whose stock is not publicly traded. Consideration to be paid to the shareholders of Company B is stock of Company A.

When an individual shareholder of Company B values the stock of Company A that he/she will acquire as consideration in the main transaction, he/she uses market price (i.e., lowest closing price in the preceding 45 days, etc.).

When Company A values the stock of Company B, there is no market price for Company B stock, so we fall back on acquisition price. The acquisition price, of course, is stated in terms of the stock of Company A. For that purpose, can Company A value its own stock by using the HSR definition of market price (lowest closing price in preceding 45 days, etc.), or must it use the actual trading price on the closing date? In other words, is 801.10(c)(1) applicable only to value stock that is being acquired? Or can it also be used to value publicly traded stock that is being used as consideration for stock that is being acquired?

[Redacted]

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THE ACQUISITION PRICE IS DETERMINE BY USING  
THE MARKET PRICE OF THE ACQUIRING PERSON'S  
VOTING STOCK WHICH IS BEING USED AS  
CONSIDERATION. N-OUJKA CONCURS

B. Michael Verne  
10/4/01