

801.1(b)  
802.30  
7A(c)(10)

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Monday, September 21, 2009 3:43 PM  
**To:** Verne, B. Michael  
**Subject:** HSR Hypothetical

Michael,

I was wondering if I could ask you an HSR hypothetical.

Three unique ultimate parent entities, Company A, Company B and Company C own 45, 10 and 45 percent of the voting securities in Issuer I. Company A, Company B and Company C have agreed that Company A and Company C can each appoint 50 percent of the Board of Issuer I. Company A wishes to acquire Company B's 10 percent directly from Company B. The value of Company A's 45 percent holding is \$180 million, as determined pursuant to Section 801.14, and the value of Company B's holding is \$40 million.

Company A's acquisition of Issuer I's stock from Company B is a potentially reportable transaction because, as a result of the acquisition, Company A will hold voting securities of Issuer I valued at \$220 million, an amount in excess of \$65.2 million. The filing fee would be \$125,000. And the transaction would be governed by 801.30. Company B would not have to file notification, but the ultimate parents of Issuer I would. Company A would file notification as an acquiring person. Company A and Company C would have to file notification as acquired persons as they are the ultimate parents of Issuer I. Section 802.30 would not apply because the acquiring and acquired persons are not the same by reason of 801.1(b)(1) (holding voting securities).

Assume a subsequent acquisition of assets from Issuer I where the assets are valued at greater than \$65.2 million. If Company C is acquiring the assets from Issuer I, the acquisition would not be subject to Section 802.30 because Company C does not control Issuer I by reason of 801.1(b)(1). If Company A is acquiring the assets from Issuer I, the acquisition would be subject to Section 802.30 because Company A does control Issuer I by reason of 801.1(b)(1).

Lastly, assume Company A itself holds 30 percent of the voting securities of Issuer I and Company A's wholly own subsidiary Company A1 holds 15 percent of the voting securities of Issuer I. An acquisition by Company A1 of the Company A's holdings in Issuer I is exempt under 15 USC 18a(c)(10) because the acquisition does not change the per centum ownership of Issuer I by Company A, which includes all entities within Company A.

Thank you for your help.

[REDACTED]

AGMEZ  
B  
9/22/09

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