

From: [Storm, Evan](#)
To: [REDACTED]
Subject: RE: Question
Date: Wednesday, April 13, 2016 9:14:00 AM

For the 90% being acquired, if the acquisition/tender price is determined (as it sounds to be), then the value is the greater of the market price (the lowest closing quotation, or, in an interdealer quotation system, the lowest closing bid price, within the 45 calendar days prior to the receipt of the notice required by §803.5(a) or prior to the consummation of the acquisition) or the acquisition price.

As for the 10% already held by A, the value of this would be calculated the same way as the 90% since the 10% is also being tendered and reacquired.

No change based on the sub hypo.

Evan

From: [REDACTED]
Sent: Tuesday, April 12, 2016 12:17 PM
To: Storm, Evan
Subject: Question

Dear Evan,

Our question relates to calculating the size-of-transaction under 16 CFR §801.14. Assume Party A is planning to acquire 100% of the outstanding voting securities in Party "B", a publically traded entity, through a cash-tender offer. "A" already owns 10% of "B", and such holdings are valued at less than \$50 million (as adjusted). The cash-tender price is higher than the market price. "A" will be submitting all of its current shares in "B" into the cash-tender, such that A will be paying itself the cash-tender price to "acquire" the shares in B that it already owns.

In calculating the aggregate value under §801.14, may "A" value its existing holdings in "B" at the market price (the 45-day low closing price under §801.10(c)(2)), and then add the value of the remaining outstanding shares to be acquired in "B" at the cash-tender price? Or must "A" value its current holdings in "B" at the cash-tender price, because they will be purchased at the cash-tender price by A from itself as a result of the transaction? We would submit that A's current holdings in B should be valued at the market price under §801.13(a)(2)(i).

We would also ask if the above answer would change if "A's" pre-existing holdings in "B" were held by a subsidiary of "A", and such holdings in "B" were transferred to a different subsidiary of "A" as a result of the transaction.

Regards,

[REDACTED]