

802.21

From: [Redacted]
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Date: Wed, Feb 28, 2001 10:00 AM
Subject: Brown Bag Lunch Examples

Mike: I'm not sure I have this right, particularly example 2, but maybe also the rationale in example 3. Can you straighten me out?

Applicable section of the rules: § 802.21

Statement of the question or problem: (1) In Year 1, A acquires 20% of v/s of B, valued at \$80 million and files for the \$50 million threshold. In Year 2, (the value of the B stock is still \$80 million) A acquires 20% of the v/s of Bsub (a sub of B), valued at \$30 million. Reportable?

(2) In Year 1, A acquires 30% of the stock of B, valued at \$120 million and files for the \$100 million threshold. In Year 2 (value of B stock is still \$120 million), A acquires 20% of the v/s of Bsub (a sub of B), valued at \$30 million. Reportable?

(3) In Year 1, A acquires 20% of the v/s of B1 (a sub of B), valued at \$110 million and files for the \$100 million threshold. In Year 2, A acquires 20% of the v/s of B2 (another sub of B), valued at \$40 million. Reportable?

Interpretation and Discussion: (1) Reportable, since the combined value crosses the \$100 million threshold. No exemption available.

(2) The exemption in 802.21 applies because A is acquiring the stock of a sub of the issuer whose securities were acquired in the earlier, reportable transaction. [Similarly, if A had first acquired the stock of the sub, and later acquired the stock of the parent, the latter would be exempt.]

(3) Also reportable. Rule 802.21 doesn't apply to the acquisition of the stock of an issuer that was not included in the earlier filing. This transaction would be reportable, regardless of the acquisition price, because the combined value of the holdings of the stock of the B subs exceeds \$50 million.

Commentary: These examples were similar to ones discussed by Mike Verne during an FTC brown bag lunch on February 22, 2001.

NOT CORRECT. SUB IS CONSIDERED PART OF SAME ISSUER AS PARENT, NOT THE OPPOSITE



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ALL CORRECT, EXCEPT AS NOTED ABOVE.

B. Michael Van
3/8/01