

Verne Michael

From: [REDACTED]  
 Sent: Friday, December 19, 2003 8:52 AM  
 To: Verne Michael  
 Subject: Question

I can't decide whether this question is simple and straightforward or not.

An existing corporation has a number of shareholders (none controlling), no operations and relatively small assets. It has never created a balance sheet in the ordinary course of its business. Three investors (none under common control) decide to use this corporation as an acquisition vehicle for a subsequent transaction. In order to do so, they agree that each will contribute \$60 million to the existing corporation, receiving newly issued shares of the corporation in return.

Do I have three non-reportable acquisitions, because the pro forma balance sheet for the existing corporation will show less than \$10 million of assets for each one? Or do I have to include \$120 million on the pro forma balance sheet for each of the three \$60 million acquisitions, and all three become reportable?

Even though 801.11(e) doesn't apply to an acquired person, this situation is interestingly analogous because if you decide that the three transactions are all reportable, you're counting the same assets toward the size-of-person and the size-of-transaction test, which is what 801.11(e) was designed to obviate.

By the way, I assume it's clear that 801.40 doesn't apply, simply because the issuer corporation is already in existence (and let's assume that it wasn't originally created with this investment and acquisition vehicle scenario in mind).

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I think that you have two potentially reportable transactions. 801.11 (e)(2) says that the size of an acquired person that does not have a regularly prepared balance sheet is "all assets held by the acquired person at the time of the acquisition". Since we don't recognize simultaneity, we would have to analyze the three acquisitions sequentially. The first investor (pick one) is not reportable since the corp will have assets of less than \$10 MM. The second will be reportable if the investor is a \$100 MM person, since the acquired corp will now have \$60+ MM in assets. The third will be reportable if the investor is a \$10 MM person since the acquired corp will now have \$120+ MM in assets.

B. Michael [Signature]

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