

801.2(d)

Verne, B. Michael

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From: [REDACTED]  
Sent: Thursday, December 14, 2006 4:15 PM  
To: Verne, B. Michael  
Cc: [REDACTED]  
Subject: RE: 801.2(d) Question

Mike - as a follow-up question. At closing, we anticipate that A, B and C will consolidate into subs of Newco and simultaneously issue members of A, B and C Newco voting shares. For purposes of calculating the size-of-the-person threshold for Newco to determine the reportability of members' acquisition of voting shares - do we: (1) look at the size of Newco immediately before consolidation; or (2) look at the size of Newco after A, B and C have consolidated into Newco?

Thanks again,  
[REDACTED]

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In a consolidation, the size-of-person of the Newco does not come into play. If there were only two companies consolidating, A is deemed to acquire B and B is deemed to acquire A. So the relevant size-of-person test is applied to A and B. In your consolidation of three companies, the size-of-person test for each step would be:

- 1) A acquiring B+C
- 2) B acquiring A+C
- 3) C acquiring A+B

So you could have three filings, but only one filing fee pursuant to 803.9(c).

If you do have three filings, you don't have to combine for purposes of the form. You would do a filing for each of A, B and C as both acquiring and acquired persons.

*Bruchman*  
12/14/06