

Verne, B. Michael

801.2(d)

From: [REDACTED]  
Sent: Monday, March 12, 2007 11:47 PM  
To: Verne, B. Michael  
Subject: Rule 801.2(d)(2)(iii) Question



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Mr. Verne:

We're working on a reportability analysis and are wondering if you could provide guidance on the following size-of-the-transaction question:

A and B are consolidating to become wholly owned subsidiaries of a newly formed corporation. Under Rule 801.2(d)(2)(iii), each party will be deemed both an acquiring and an acquired party. As I interpret the rule, there are thus two potentially reportable transactions: (i) A acquires B and (ii) B acquires A. The question is whether the sizes of A and B are aggregated for purposes of valuing the transaction. I assume not, but would like confirmation.

For example if A's total assets or total net sales is \$7m and B's is \$53M, then I interpret the rule to yield two nonreportable transactions: A acquires B with a transaction size of \$53M, and B acquires A with a transaction size of \$7M.

But if the two valuations are aggregated, the total transaction size would be \$60M and reportable. Can you provide guidance on the correct reading of this rule? I haven't found a written interpretation or example anywhere. Many thanks.

[REDACTED]

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You are mixing the size-of-person test with the size-of-transaction test. A or B must have \$119.6 MM in either sales or assets and the other must have \$12.0 MM in either sales or assets. If both of these are satisfied, the size of person test is met. The next test is to determine the fair market value of 100% of the voting securities of both A and B. The greater of these two values is the size-of-transaction. If this value exceeds \$59.8 MM, the consolidation is reportable. Both A and B would file as both acquiring and acquired, but there is only one filing fee required (based on the higher fair market value of either A or B's voting securities).

*Bruehl*  
3/12/07