

802.21

Verne, B. Michael

From: [REDACTED]
Sent: Friday, March 05, 2010 11:39 AM
To: Verne, B. Michael
Subject: Aggregation Question

Hi, Mike:

One year ago, Company A acquired assets (in the form of an exclusive license) of Company B and simultaneously purchased voting securities of Company B in the amount of \$5mm. Companies A and B filed notification for these two transactions, aggregated pursuant to 801.14, at the \$50 mm (as adjusted) threshold. Now, Company A intends to acquire additional voting securities of Company B which will result in Company A holding in excess of \$50 mm (as adjusted) but less than \$100 mm (as adjusted) of voting securities of Company B. It is our understanding that 801.21 permits this acquisition of additional voting securities with the need for a new filing despite the fact that the previous HSR filing was both for *assets* and voting securities. Is this correct?

Thanks,

[REDACTED]

[REDACTED]

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Nope – § 802.21 requires that you acquire sufficient voting securities in the first year to cross the threshold. You can then acquire up to the next threshold for five years.

§ 802.21(a)(3) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold (as adjusted) greater **than the greatest notification threshold met or exceeded** in the earlier acquisition.

Notification thresholds only apply to voting securities (see Item 2(c) of the Form and § 801.1(h) of the rules. Although you exceeded the \$50 million (as adjusted) **filing fee** threshold, you didn't exceed the \$50 million (as adjusted) notification threshold.

BN
3/5/10