

802.21

Verne, B. Michael

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From: [REDACTED]  
Sent: Tuesday, August 03, 2010 2:48 PM  
To: Verne, B. Michael  
Subject: Question about 25% threshold & 802.21

Mike,

I hope all is going well for you.

We had a question about the 25% threshold.

Assume A files at the \$500 million (as adjusted) threshold to acquire shares of B. (A and B are their own UPEs and there are no aggregation issues.) Assume within one year of filing that A makes an acquisition such that its total holdings exceed the \$500 million (as adjusted) threshold.

On those assumptions, A can of course acquire more of B for up to five years after the waiting period expires so long as it does not meet the next notification threshold.

Assume 25% of B is presently valued at less than \$1 billion (as adjusted). That would mean that A's filing would enable it to acquire up to one share less than 50% of B's outstanding voting securities without having to do an additional filing.

Assume that, taking advantage of that fact, A acquires shares such that its holdings are now 25% of B's outstanding voting securities, but still valued at less than \$1 billion (as adjusted).

Now assume that the value of B's voting securities increases so that 25% are valued at greater than \$1 billion (as adjusted).

Here's the question: can A make further acquisitions (within five years of the expiration of the original notification at the \$500 million (as adjusted) threshold) without doing a new filing? It would seem yes because 802.21 exempts acquisitions (within the five years) that would 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." It does not seem to require that the original filing specify the 25% threshold, just that the latest acquisition not be the one that "meets or exceeds" the next higher threshold.

It would also seem that the answer to the question is not dependent on when the 25% threshold was crossed within the five years, so long as the acquisition that resulted in the threshold being crossed was at a time when 25% of the voting securities of B was valued at less than \$1 billion (as adjusted).

Please let me know whether you concur (or not). Thanks as always.

[REDACTED]

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I think that if A currently holds 25% of B's voting securities valued at \$1 billion (as adjusted), the increase in value wouldn't have been reportable, but now any acquisition of additional shares will result in A holding voting securities of B exceeding a higher threshold than it filed for.

BM  
K. BEH CONCERN  
8/23/10