

Verne, B. Michael

802.21

From: [REDACTED]
Sent: Tuesday, January 10, 2012 10:56 AM
To: Verne, B. Michael
Subject: HSR Threshold Question

Mike, two threshold questions as to which your guidance would be appreciated:

1. Company X owns more than \$66 million of Company Y which were acquired permissibly based on an exemption but now the exemption no longer applies. Company X will file to cross the \$131.9 million threshold. After it gets clearance if it does not for some reason cross the \$131.9 threshold within one year, my understanding is that after one year it can still acquire additional shares above the \$66 million threshold without refiling, as long as it does not cross the \$131.9 million threshold without refiling. Do you agree?
2. Same scenario and Company X files to cross the \$131.9 million threshold, It gets clearance and does acquire additional shares but doesn't cross the threshold. Then changes in market value take the value of its holdings over \$131.9 million and then stock drops back down again in value to below \$131.9 million. Company X then wants to buy more shares. Would it have to refile to cross the \$131.9 million threshold or not? (My apologies, Mike, I think you did answer this question for me once but I have gone through all of my emails several times and can't seem to find your response.)

Thanks very much.

BM
1/10/12

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Thank You.

1. Correct
2. Yes – another filing would be required. In order for 802.21 to apply, the threshold must be exceeded by means of an acquisition, not an increase in value.