

**Ferkingstad, James H.**

---

**From:** Verne, B. Michael  
**Sent:** Tuesday, September 18, 2012 3:18 PM  
**To:** [REDACTED]; Ferkingstad, James H.; Pope, Susan H.  
**Subject:** RE: Application of HSR Rules--Size of Transaction

Because of the 5% of non-publicly traded Newco stock, the acquisition price for the assets of S is undetermined. The board of directors of P would determine the fair market value of the S assets to be acquired. Neither 801.40 nor 801.21 is applicable to the transaction.

---

**From:** [REDACTED]  
**Sent:** Tuesday, September 18, 2012 2:49 PM  
**To:** Verne, B. Michael; Ferkingstad, James H.; Pope, Susan H.  
**Subject:** Application of HSR Rules--Size of Transaction

**TO: FTC Staff:**

**P** intends to form a new subsidiary, **Newco**, to acquire assets of **S**. As consideration for the **S** assets, **P** will pay to **S** \$30 million in cash and deliver to **S** a promissory note in the principal amount of \$15 million. In addition, **P** will cause Newco to issue to **S** 5% of the outstanding voting stock of **Newco**, and **P** will hold the remaining 95% of the voting stock of **Newco**. For purposes of the size-of-transaction test, should the value of the 5% voting stock of **Newco** be included? If so, should the value be based on the FMV of **Newco** voting stock as determined by the board of directors of **S**?

Would the proposed transaction be subject to Rule 801.40?

I understand that Rule 801.21 does not apply in the case presented because **S** will acquire voting securities of an entity controlled by **P**.

Your prompt response and guidance would be appreciated.

Thanks you,

[REDACTED]