

802.21  
802.9

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Wednesday, October 03, 2012 11:42 AM  
**To:** Walsh, Kathryn; Verne, B. Michael; Berg, Karen E.  
**Subject:** Acquisitions after spin off

Hello all,

I found some relatively old interpretations stating that a pro-rata spin off of a subsidiary to existing shareholders is exempt under 802.10 and 7A(c)(10), but subsequent acquisitions of the newly spun off subsidiary's voting securities would be separately subject to the HSR Act (see interpretation #9905007). Please let me know if that is not the current position of the PNO. I represent Shareholder S who filed HSR for a Parent entity at the \$100 mm level within the past five years, and exceeded such level during the first year. Parent plans to spin off its Subsidiary B pro-rata to existing shareholders. The value of the Subsidiary B voting securities to be received by Shareholder S is in excess of \$68.2 million.

Based on the interpretation, it is my understanding that the spin off is exempt and Shareholder S may continue to acquire Parent shares in reliance on the previously filed HSR. However, to acquire additional voting securities of spun-off Subsidiary B Shareholder S must file HSR and observe the waiting period unless an exemption applies. Please confirm this is correct.

Would an investor be able to rely on 802.9 with respect to Subsidiary B if it was not able to rely on such exemption with respect to Parent because (i) it has a director on the board of Parent or (ii) it proposed a course of action for Parent requiring shareholder approval? What if the proposal was the spin-off of Subsidiary B?

Thank you,  
[REDACTED]

[REDACTED]

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802.21 would not cover future acquisitions of the sub's stock, only the parent. Otherwise, two separate UPEs would be able to rely on the exemption. On the 802.9 question, we don't think having a director on the former parent's board or proposing any action to the former parent would disqualify a shareholder for using 802.9 in an acquisition of the spun off sub.

BM  
10/3/12

F. WALSH CONCURS