

Premerger Notification Office
December 14, 1995

Page 2

corporations). But to separate those elements in time and also to decide which one occurs first is another matter.

In all events, it is my understanding that the size-of-the-person test is applied on a pre-transaction basis. To determine whether a transaction is reportable, one looks at the size of the HSR "persons" participating in the transaction before (often long before) the transaction closes and also at the size of the transaction itself. But the two size tests (person and transaction) are separate. One does not confuse them by taking the transaction into consideration (here, the Merger that gives Shareholders X and Y their voting securities in New REIT) to determine the size of the persons. Indeed, were things otherwise and as I can demonstrate with examples, many transactions that are otherwise reportable would become unreportable.

Nor does Rule 801.11(b)(1) dictate a different result. That rule requires the recomputation of assets and net sales for multiple entities that, at the applicable measurement time, are part of the same person but happen not to have consolidated financial statements. But here, REITs A, B and C will not have been part of New REIT's person at any time during the last full fiscal year preceding the Merger or as of the last balance sheet date preceding the Merger -- i.e., when the HSR rules measure the size of the person. And, or so we understand, neither "expansion events" (events that would drive a person above a size threshold) or "contraction events" (events that would drop a person below a size threshold) affect the size of the person if they occur after the measurement time but before the closing of the transaction being tested. A fortiori, or so it seems to me, the transaction itself does not affect the size of the person. Certainly no rule says otherwise.

yes it does

YOU MUST CONSOLIDATE AN ISSUER WHEN ARGUED!

WRONG. UNCONSOLIDATED ISSUERS MUST BE ADDED IN!!!
Please let me know what you think. I again thank you for your patience and assistance, particularly given the time of year.

Sincerely truly yours

12/20 spoke to writer; Told him as above; X & Y have to file. HDR