

803.12

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, June 11, 2014 3:15 PM
To: Verne, B. Michael; Walsh, Kathryn E.; Berg, Karen E.
Subject: Question re: foreign companies and automatic withdrawal of an HSR

Hi – I have a query about the effect of 803.12 on foreign to foreign transactions or offers. For example, French Company A, which has ADRs registered in the US, launches an offer in France to acquire another French Company B. French Company A files a 6-K with the SEC announcing the offer. The offer then fails although French Company A intends to relaunch it. French Company A files a 6-K with the SEC announcing the termination of the offer.

The examples to rule 803.12 only talk about 8-K filings and Schedule TO and TO/A, as does the statement of basis and purpose. But the rule refers to filings under the 34 Act, which includes 6-Ks.

Does the filing of the second 6-K mean that French Company A's HSR has been automatically withdrawn? Thanks,

[REDACTED]

[REDACTED]

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We think the gating issue is whether the foreign to foreign deal involves an HSR. If it does, we think the rule would catch what you describe below. If there is no HSR, it's moot of course.

BW
~~HW~~
6/12/14

KW CONCURS