

Gillis, Diana L.

From: Walsh, Kathryn E.
Sent: Monday, August 17, 2015 10:07 AM
To: [REDACTED]
Cc: Whitehead, Nora; Gillis, Diana L.
Subject: RE: 803.5(a)(2)

[REDACTED]

Yes, that press release will be enough – see #218 in the new PNPM.

An 8-K is also sufficient to meet the requirement.

Kate

From: [REDACTED]
Sent: Sunday, August 16, 2015 4:59 PM
To: Walsh, Kathryn E.
Cc: Whitehead, Nora; Gillis, Diana L.
Subject: 803.5(a)(2)

Kate,

Company A and Company B have agreed that A will acquire B. Both are public companies, and the transaction will be accomplished in part through a tender offer. I understand that though the parties have a signed agreement, because there is a tender offer involved the 803.5(a)(2) requirement that the tender offer be publicly announced prior to filing HSR still holds.

Prior to launching the tender offer, the parties issue a press release announcing the deal which states that the transaction will be effected through a tender offer and that the tender offer will commence at some point in the near future. Is this press release enough to satisfy the public announcement requirement of 803.5(a)(2)?

What if instead of a press release, the parties file an 8-K with the SEC; the 8-K announces the deal and includes a copy of the executed agreement between the parties, the provisions of which detail that the transaction will be effected through a tender offer. Is this 8-K enough to satisfy the public announcement requirement of 803.5(a)(2)?

Thanks.

[REDACTED]

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