

Sheinberg, Samuel I.

From: Shaffer, Kristin
Sent: Tuesday, July 31, 2018 9:56 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 802.21 Question

[REDACTED]

You are correct that at least one share must be retained. Shares immediately sold under T+2 do not count as acquisitions.

Best regards,
Kristin

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From: [REDACTED]
Sent: Monday, July 30, 2018 8:51:29 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: 802.21 Question

Hi all,

I would appreciate your guidance regarding the application of Section 802.21 to acquisitions of an issuer's voting securities by an officer of the issuer.

As part of the officer's compensation package, the company granted the officer restricted stock units that vest over several years (the "relevant period"). The officer already holds shares of issuer that exceed the \$50 million threshold (as adjusted). The officer previously notified the acquisition of the shares currently held. The officer expects that the value of the company's shares that will vest over the relevant period will exceed the \$100 million threshold (as adjusted).

Assume that the officer files to cross the \$100 million threshold and that the waiting period expires. In the year after expiration of the waiting period, all of the shares that will vest under the officer's compensation package will automatically be sold (and settled within T+2) under a pre-arranged 10b-5 plan. Please also assume that the value of the officer's shares acquired prior to the relevant period will appreciate and their value will exceed the \$100 million threshold during the year after expiration of the waiting period.

For purposes of applying Section 802.21 and allowing the officer to purchase shares up to the \$500 million threshold (as adjusted) for 5 years without filing another notification, does the automatic sale of the shares qualify as an acquisition? Or must the officer retain at least one share for a period longer than the T+2 settlement cycle?

[REDACTED]

