

**PART 803—TRANSMITTAL RULES**

4. The authority citation for part 803 continues to read as follows:

**Authority:** 15 U.S.C. 18a(d).

5. Amend § 803.9 by adding examples 7 and 8 to paragraph (a) and by revising paragraph (c) to read as follows:

**§ 803.9 Filing fee.**

\* \* \* \* \*

(a) \* \* \*

*Examples:*

\* \* \* \* \*

7. "A" intends to acquire 20 percent of the voting securities of B, a non-publicly traded issuer. The agreed upon acquisition price is \$99 million subject to post-closing adjustments of up to plus or minus \$2 million. "A" estimates that the adjustments will be minus \$1 million. In this example, since "A" is able in good faith to reasonably estimate the adjustments to the agreed-on price, the acquisition price is deemed to be determined and the appropriate filing fee threshold is \$50 million. Even if the post-closing adjustments cause the final price actually paid to exceed \$100 million, "A" would be deemed to hold \$98 million in B voting securities as a result of this acquisition. Note, however, since the potential acquisition price subject to adjustments could have exceeded the \$100 million threshold (e.g., "straddles two filing fee thresholds"), an explanation of why the lower threshold was indicated should be attached. Also note that any additional acquisition by "A" of B voting stock (if the value of the stock currently held by "A" is \$100 million or more) will cause "A" to cross the \$100 million threshold and another filing and the appropriate fee will be required.

8. "A" intends to make a cash tender offer for a minimum of 50 percent plus one share of the voting securities of B, a non-publicly traded issuer, but will accept up to 100 percent of the shares if they are tendered. There are 12 million shares of B voting stock outstanding and the tender offer price is \$10 per share. In this instance, since there is no

cap on the number of shares that can be tendered, the value of the transaction will be the value of 100 percent of B's voting securities, and "A" must pay the \$125,000 fee for the \$100 million filing fee threshold. Note that if the tender offer had been for a maximum of 50 percent plus one share the value of the transaction would be \$60 million, and the appropriate fee would be \$45,000, based on the \$50 million filing fee threshold. This would be true even if the tender offer were to be followed by a merger which would be exempt under Section 7A(c)(3),

\* \* \* \* \*

(c) For a reportable transaction in which the acquiring entity has two ultimate parent entities, both ultimate parent entities are acquiring persons; however, if the responses for both ultimate parent entities would be the same for item 5 of the Notification and Report Form, only one filing fee is required in connection with the transaction.

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6. Amend § 803.20 by revising paragraph (c) and the example thereto, to read as follows:

**§ 803.20 Requests for additional information or documentary material.**

\* \* \* \* \*

(c) *Waiting period extended.* (1) During the time period when a request for additional information or documentary material remains outstanding to any person other than either:

(i) In the case of a tender offer, the person whose voting securities are sought to be acquired by the tender offeror (or any officer, director, partner, agent or employee thereof), or

(ii) In the case of an acquisition covered by 11 U.S.C. 363(b), the acquired person, the waiting period shall remain in effect, even though the waiting period would have expired (see

§ 803.10(b)) if no such request had been made.

(2) A request for additional information or documentary material to any person other than either:

(i) In the case of a tender offer, the person whose voting securities are being acquired pursuant to the tender offer (or any officer, director, partner, agent or employee thereof), or

(ii) In the case of an acquisition covered by 11 U.S.C. 363(b), the acquired person, shall in every instance extend the waiting period for a period of 30 (or, in the case of a cash tender offer or of an acquisition covered by 11 U.S.C. 363(b), 10) calendar days from the date of receipt (as determined under § 803.10) of the additional information or documentary material requested.

*Example:* Acquiring person "A" makes a non-cash tender offer for voting securities of corporation "X", and files notification. Under § 801.30, the waiting period begins upon filing by "A," and "X" must file within 15 days thereafter (10 days if it were a cash tender offer). Assume that before the end of the waiting period, the Assistant Attorney General issues a request for additional information to "A" and "X." Since the transaction is a non-cash tender offer, the waiting period is extended for 30 days (10 days if it were a cash tender offer) beyond the date on which "A" responds. Note that under § 803.21, even though the waiting period is not affected by the second request to "X" or by "X" supplying the requested information, "X" is obliged to respond to the request within a reasonable time. Nevertheless, the Federal Trade Commission and Assistant Attorney General could, notwithstanding the pendency of the request for additional information, terminate the waiting period sua sponte pursuant to § 803.11(c).

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7. Revise the Appendix to part 803 to read as follows:

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