

waiting period, "A" continues to acquire voting securities of B. No further notification is required until "A" plans to make the acquisition that will give it 25 percent of B's voting securities valued at over \$1 billion; or 50 percent ownership of B. (Once "A" holds 50 percent, further acquisitions of voting securities are exempt under Section 7A(c)(3)).

4. This section also allows a person to recross any of the threshold notification levels—\$50 million, \$100 million, \$500 million, 25 percent (if valued over \$1 billion) and 50 percent—any number of times within 5 years of the expiration of the waiting period following notification for that level. Thus, if in Example 1, "A" had disposed of some voting securities so that it held less than \$50 million of the voting securities of B, and thereafter had increased its holdings to more than \$50 million but less than \$100 million or 50 percent of B, notification would not be required if the increase occurred within 5 years of the expiration of the original waiting period. Similarly, in Examples 2 and 3, "A" could decrease its holdings below, and then increase its holdings above, \$50 million and \$500 million, respectively without filing notification, if done within 5 years of the expiration of those respective waiting periods.

(b) *Year 2001 Transition.* For transactions filed using the 1978 thresholds where the waiting period expired after February 1, 1996, an acquiring person may acquire up to what was the next percentage threshold at the time it made its filing without filing another notification, even if in doing so it crosses a 2001 notification threshold in §801.1(h). However, it has only one year from February 1, 2001, or until the end of the original 5-year period following expiration of the waiting period, whichever comes first, to acquire additional securities up to the previous next threshold. Any acquisition thereafter must be the subject of a new notification if it meets or exceeds a 2001 threshold in §801.1(h).

Examples: 1. Corporation A filed to acquire 20 percent of the voting securities of corporation B and indicated the 15 percent threshold. The waiting period expired on October 3, 1999. "A" acquired the 20 percent within the year following expiration of the waiting period. "A" has until February 1, 2002 to acquire additional securities up to 25 percent of "B's" voting securities, and need not make another filing before doing so, even though such acquisition by "A" may cross the \$50 million, \$100 million or \$500 million notification threshold in §801.1(h). After February 1, 2002, "A" and "B" must observe the 2001 notification thresholds set out in §801.1(h).

2. Same facts as in Example 1 above, except that the waiting period on corporation A's filing expired on October 3, 1996. "A" has until October 3, 2001 to make additional acquisitions up to the 25 percent threshold. The one year transition period in §802.21(b) cannot be used to extend the 5-year period for additional acquisitions provided for in §802.21(a).

3. Prior to February 1, 2001, "A" filed to acquire 12 percent of the voting securities of corporation B and indicated the \$15 million notification threshold. In March, 2001, "A" determines that it will make an additional acquisition which will result in it holding 16 percent of the voting securities of B, valued at \$60 million. "A" is required to file notification at the \$50 million notification threshold prior to making the acquisition.

4. Prior to February 1, 2001, "A" filed to acquire 26 percent of the voting securities of "B" and indicated the 25 percent notification threshold. After February 1, 2002, "A" will acquire additional shares of "B" which will result in it holding 30 percent of the voting securities of "B", valued at \$125 million. "A" is required to file notification at the \$100 million notification threshold prior to making the acquisition. "A" could, however, have reached this level (30 percent valued at \$125 million) prior to February 1, 2002 without making an additional filing. If "A" had done this, and then wanted to acquire any additional voting securities of "B" after February 1, 2002, "A" would have to file for the \$100 million notification threshold.

(c) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold greater than the greatest notification threshold met or exceeded in the earlier acquisition.

[43 FR 33544, July 31, 1978, as amended at 66 FR 8693, Feb. 1, 2001]

§802.23 Amended or renewed tender offers.

Whenever a tender offer is amended or renewed after notification has been filed by the offeror, no new notification shall be required, and the running of the waiting period shall be unaffected, except as follows:

(a) If the number of voting securities to be acquired pursuant to the offer is increased such that a greater notification threshold would be met or exceeded, only the acquiring person need again file notification, but a new waiting period must be observed;

(b) If a noncash tender offer is amended to become a cash tender offer,

§ 802.30

16 CFR Ch. I (1-1-02 Edition)

(1) one copy of the amended tender offer shall be filed in the manner prescribed by § 803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is earlier; or

(c) If a cash tender offer is amended to become a noncash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by § 803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (as determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is later.

Examples: 1. Assume that corporation A makes a tender offer for 20 percent of the voting securities of corporation B and that "A" files notification. Under this section, if A subsequently amends its tender offer only as to the amount of consideration offered, the waiting period so commenced is not affected, and no new notification need be filed.

2. In the previous example, assume that A makes an amended tender offer for 27 percent of the voting securities of B, valued at greater than \$1 billion. Since a new notification threshold will be crossed, this section requires that "A" must again file notification and observe a new waiting period. Paragraph (a) of this section, however, provides that "B" need not file notification again.

3. Assume that "A" makes a tender offer for shares of corporation B. "A" includes its voting securities as part of the consideration. "A" files notification. Five days later, "A" changes its tender offer to a cash tender offer, and on the same day files copies of its amended tender offer with the offices designated in § 803.10(c). Under paragraph (b) of this section, the waiting period expires (unless extended or terminated) 15 days after the receipt of the amended offer (on the 20th day after filing notification), since that occurs earlier than the expiration of the original waiting period (which would occur on the 30th day after filing).

4. Assume that "A" makes a cash tender offer for shares of corporation B and files notification. Six days later, "A" amends the tender offer and adds voting securities as consideration, and on the same day files copies of the amended tender offer with the of-

fices designated in § 803.10(c). Under paragraph (c) of this section, the waiting period expires (unless extended or terminated) on the 30th day following the date of filing of notification (determined under § 803.10(c)), since that occurs later than the 15th day after receipt of the amended tender offer (which would occur on the 21st day).

[43 FR 33544, July 31, 1978; 43 FR 36054, Aug. 15, 1978, as amended at 66 FR 8694, Feb. 1, 2001]

§ 802.30 Intraperson transactions.

An acquisition (other than the formation of a joint venture or other corporation the voting securities of which will be held by two or more persons) in which, by reason of holdings of voting securities, the acquiring and acquired persons are (or as a result of formation of a wholly owned entity will be) the same person, shall be exempt from the requirements of the act.

Examples: 1. Corporation A merges its two wholly owned subsidiaries S1 and S2. The transaction is exempt under this section.

2. Corporation B creates a new wholly owned subsidiary. The transaction is exempt under this section.

3. Corporation A, which controls corporation B by a contract giving A the power to name a majority of B's directors, but which holds no voting securities of B, proposes to acquire 15 percent of B's voting securities. The transaction is not exempt under this section, since "A" and "B" are not the same person "by reason of holdings of voting securities."

4. Corporation A repurchases a portion of its voting securities in a series of transactions involving numerous sellers. All of these acquisitions are exempt under this section. The redemption or retirement of securities would likewise be exempt under this section.

5. Corporations A and B (which are not included within the same person) form a new corporation, C. A and B will each hold C's voting securities upon formation. This section is inapplicable, and the acquisitions of C's voting securities by A and B are not exempt.

§ 802.31 Acquisitions of convertible voting securities.

Acquisitions of convertible voting securities shall be exempt from the requirements of the act.