

## Federal Trade Commission

## § 802.35

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 offices 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.

*Example:* This section applies regardless of the dollar value of the convertible voting securities held or to be acquired. Note, however, that subsequent conversions of convertible voting securities may be subject to the requirements of the act. See §801.32.

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

### § 802.35 Acquisitions by employee trusts.

An acquisition of voting securities shall be exempt from the notification requirements of the act if:

(a) The securities are acquired by a trust that meets the qualifications of section 401 of the Internal Revenue Code;

(b) The trust is controlled by a person that employs the beneficiaries and,

(c) The voting securities acquired are those of that person or an entity within that person.

*Examples:* 1. Company A establishes a trust for its employees that meets the qualifications of section 401 of the Internal Revenue Code. Company A has the power to designate