transaction, both parties must file a new notification and observe the waiting period in order to carry out the transaction.  

[70 FR 73372, Dec. 12, 2005]

§ 803.9 Filing fee.  
(a) Each acquiring person shall pay the filing fee required by the act to the Federal Trade Commission, except as provided in paragraphs (b) and (c) of this section. No additional fee is to be submitted to the Antitrust Division of the Department of Justice.

Examples: 1. “A” wishes to acquire voting securities issued by B, where the greater of the acquisition price and the market price is in excess of $50 million (as adjusted) but less than $100 million (as adjusted) pursuant to § 801.10. When “A” files notification for the transaction, it must indicate the $50 million (as adjusted) threshold and pay a filing fee of $45,000 because the acquisition price can be reasonably estimated. If the amount of adjustments cannot be reasonably estimated, acquisition price—as adjusted to reflect that estimate—is determined. If the amount of adjustments cannot be reasonably estimated, the acquisition price is undetermined. In either case the board or its delegate must determine in good faith the fair market value. (§ 801.10(b) states that the value of an asset acquisition is to be the fair market value or the acquisition price, if determined and greater than fair market value.) “A” files notification and submits a $45,000 filing fee. “A”’s decision to pay that fee may be justified on either of two bases, and “A” should submit an attachment to the Notification and Report Form explaining the valuation. First, “A” may have concluded that the acquisition price can be reasonably estimated to be less than $100 million (as adjusted), because of anticipated adjustments—e.g., based on due diligence by “A’”s accounting firm indicating that one third of the inventory is not saleable. If fair market value is also determined in good faith to be less than $100 million (as adjusted), the $45,000 fee is appropriate. Alternatively, “A” may conclude that because the adjustments cannot reasonably be estimated, acquisition price is undetermined. If so, “A” would base the valuation on the good faith determination of fair market value. The acquiring party’s execution of the Certification also attests to the good faith valuation of the value of the transaction.