§ 802.10 Stock dividends and splits; reorganizations.

(a) The acquisition of voting securities pursuant to a stock split or pro rata stock dividend is exempt from the requirements of the Act under section 7A(c)(10).

(b) An acquisition of non-corporate interests or voting securities as a result of the conversion of a corporation or unincorporated entity into a new entity is exempt from the requirements of the Act if:

1. Partners A and B hold 60 percent and 40 percent respectively of the partnership interests in C. C is converted to a corporation in which A and B hold 60 percent and 40 percent respectively of the voting securities. No new assets are contributed. The conversion to a corporation is exempt from notification for both A and B.

2. Shareholder A holds 55% and B holds 45% of the voting securities of corporation C. C is converted to a limited liability company in which A holds 60% and B holds 40% of the membership interests. No new assets are contributed. The conversion to a limited liability company, the conversion is not exempt from notification because A controlled the corporation. If however, B holds 55% and A holds 45% in the new limited liability company, the conversion is not exempt for B and may require notification because control changes.

3. Shareholders A, B and C each hold one third of the voting securities of corporation X. Pursuant to a reorganization agreement, A and B each contribute new assets to X and C contributes cash. X is then being reincorporated in a new state. Each of A, B and C receive one third of the voting securities of newly reincorporated C. The reincorporation is not exempt from notification and may be reportable for A, B and C because of the contribution of new assets.

Examples:

1. In 2004, Corporation A acquired $53 million of the voting securities of corporation B and both “A” and “B” filed notification as required, indicating the $50 million threshold. Within five years of the expiration of the original waiting period, “A” acquires additional voting securities of B but not in an amount sufficient to meet or exceed $100 million (as adjusted) or 50 percent of the voting securities of B. No additional notification is required.

2. In 2004, Corporation A acquired $55 million of the voting securities of corporation B and both “A” and “B” filed notification as required, indicating the $50 million threshold. Suppose that in year three following the expiration of the waiting period, the $50 million notification threshold has been adjusted to $56 million pursuant to Section 7A(a)(3)(a) of the Act. “A” now intends to acquire an additional $5 million of the voting securities of B. “A” is not required to file another notification even though it now holds voting securities in excess of the $50 million notification threshold (as adjusted) greater than the notification threshold indicated in its filing, because it has not met or exceeded a notification threshold (as adjusted) greater than the notification threshold exceeded in the earlier acquisition (i.e. $100 million (as adjusted) or 50% notification thresholds).

3. Same facts as in Example 2 above except now the five year period has expired. Suppose that, the $50 million notification threshold has been adjusted to $57 million.
pursuant to Section 7(a)(2)(a) of the Act. “A” now holds $58 million of voting securities of B. Because §802.21(a)(2) is no longer satisfied, the acquisition of any additional voting securities of B will require a new filing because “A” will hold voting securities valued in excess of the $57 million notification threshold. If, however, the $50 million notification threshold had been adjusted to $60 million at the end of the five-year period, A could acquire up to that threshold without a new filing.

4. This section also allows a person to recross any of the threshold notification levels that were in effect at the time of filing notification any number of times within five years of the expiration of the waiting period following notification. 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.

5. A files notification at the $50 million notification threshold and acquires $51 million of the voting securities of B in the year following expiration of the waiting period. The next greater notification threshold at the time of filing was $100 million. In year three, the $100 million notification threshold has been adjusted to $106 million. A can now acquire up to, but not meet or exceed, voting securities of B valued at $106 million. As the original $100 million threshold is adjusted upward in years four and five, A can acquire up to those new thresholds as the adjustments are effected.

6. A files notification at the $50 million notification threshold in January of year one. In February of year one, the $50 million threshold is adjusted to $52 million. A only needs to acquire in excess of $50 million of voting securities of B, not in excess of $52 million, to have exceeded the threshold which was filed for in the year following expiration of the waiting period (see §804.7). It may then acquire up to the next greater notification threshold (as adjusted) during the five years following expiration of the waiting period.

(b) [Reserved]

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. If, however, A amends its 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.

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飞翔es copies of its amended tender offer with the offices designated in §803.10(c). Under paragraph (b) of