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are subject to separate waiting periods; see § 801.4.

[43 FR 33537, July 31, 1978; 43 FR 36054, Aug. 15, 1978, as amended at 52 FR 7082, Mar. 6, 1987]

§ 801.31 Acquisitions of voting securities by offerees in tender offers.

Whenever an offeree in a noncash tender offer is required to, and does, file notification with respect to an acquisition described in § 801.2(e):

(a) The waiting period with respect to such acquisition shall begin upon filing of notification by the offeree, pursuant to §§ 801.30 and 803.10(a)(1);

(b) The person within which the issuer of the shares to be acquired by the offeree is included shall file notification as required by § 801.30(b);

(c) Any request for additional information or documentary material pursuant to section 7A(e) and § 803.20 shall extend the waiting period in accordance with § 803.20(c); and

(d) The voting securities to be acquired by the offeree may be placed into escrow, for the benefit of the offeree, pending expiration or termination of the waiting period with respect to the acquisition of such securities; *Provided however,* That no person may vote any voting securities placed into escrow pursuant to this paragraph.

Example: Assume that ''A,'' which has annual net sales exceeding $100 million, makes a tender offer for voting securities of corporation X. The consideration for the tender offer is to be voting securities of A. ''S,'' a shareholder of X with total assets exceeding $10 million, wishes to tender its holdings of X and in exchange would receive shares of A valued at $16 million. Under this section, ''S's'' acquisition of the shares of A would be an acquisition separately subject to the requirements of the act. Before ''S'' may acquire the voting securities of A, ''S'' must first file notification and observe a waiting period—which is separate from any waiting period that may apply with respect to ''A'' and ''X.'' Since § 801.30 applies, the waiting period applicable to ''A'' and ''S'' begins upon filing by ''S,'' and ''A'' must file with respect to ''S's'' acquisition within 15 days pursuant to § 801.30(b). Should the waiting period with respect to ''A'' and ''X'' expire or be terminated prior to the waiting period with respect to ''S'' and ''A,'' ''S'' may wish to tender its X-shares and place the A-shares into a nonvoting escrow until the expiration or termination of the latter waiting period.

§ 801.32 Conversion and acquisition.

A conversion is an acquisition within the meaning of the act.

Example: Assume that acquiring person ''A'' wishes to convert convertible voting securities of issuer X, and is to receive common stock of X valued at $20 million. If ''A'' and ''X'' satisfy the criteria of section 7A(a)(1) and section 7A(a)(2), then ''A'' and ''X'' must file notification and observe the waiting period before ''A'' completes the acquisition of the X common stock, unless exempted by section 7A(c) or these rules. Since § 801.30 applies, the waiting period begins upon notification by ''A,'' and ''X'' must file notification within 15 days.

§ 801.33 Consummation of an acquisition by acceptance of tendered shares of payment.

The acceptance for payment of any shares tendered in a tender offer is the consummation of an acquisition of those shares within the meaning of the act.

[48 FR 34433, July 29, 1983]

§ 801.40 Formation of joint venture or other corporations.

(a) In the formation of a joint venture or other corporation (other than in connection with a merger or consolidation), even though the persons contributing to the formation of a joint venture or other corporation and the joint venture or other corporation itself may, in the formation transaction, be both acquiring and acquired persons within the meaning of § 801.2, the contributors shall be deemed acquiring persons only, and the joint venture or other corporation shall be deemed the acquired person only.

(b) Unless exempted by the act or any of these rules, upon the formation of a joint venture or other corporation, in a transaction meeting the criteria of section 7A (a) (1) and (3) (other than in connection with a merger or consolidation), an acquiring person shall be subject to the requirements of the act if:

(1)(i) The acquiring person has annual net sales or total assets of $100 million or more;

(ii) The joint venture or other corporation will have total assets of $10 million or more; and