

§ 803.6

16 CFR Ch. I (1–10 Edition)

the acquired person pursuant to paragraph (a)(1) of this section. For electronic filing, an electronic copy of the written notice must be attached as part of the electronic submission.

(b) *Non-section 801.30 acquisitions.* For acquisitions to which § 801.30 does not apply, the notification required by the act shall contain an affidavit, attached to the front of the notification, or attached as part of the electronic submission, attesting that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and further attesting to the good faith intention of the person filing notification to complete the transaction.

[43 FR 33548, July 31, 1978, as amended at 48 FR 34439, July 29, 1983; 52 FR 7082, Mar. 6, 1987; 66 FR 8695, Feb. 1, 2001; 70 FR 4996, Jan. 31, 2005; 71 FR 35998, June 23, 2006]

§ 803.6 Certification.

(a) The notification required by the act shall be certified:

(1) In the case of a partnership, by any general partner thereof;

(2) In the case of a corporation, by any officer or director thereof;

(3) In the case of a person lacking officers, directors, or partners, by any individual exercising similar functions;

(4) In the case of a natural person, by such natural person or his or her legal representative;

(5) In the case of the estate of a deceased natural person, by any duly authorized legal representative of such estate.

(b) Additional information or documentary material submitted in response to a request pursuant to section 7A(e) and § 803.20 shall be accompanied by a certification in the format appearing at the end of the Notification and Report Form, completed in accordance with paragraph (a) of this section by the person or individual to whom it was directed.

(c) In all cases, the certifying individual must possess actual authority to make the certification on behalf of the person filing notification.

[43 FR 33548, July 31, 1978, as amended at 48 FR 34429, July 29, 1983]

§ 803.7 Expiration of notification.

(a) *One year after waiting period expired.* Notification with respect to an

acquisition shall expire 1 year following the expiration of the waiting period. If the acquiring person's holdings do not, within such time period, meet or exceed the notification threshold with respect to which the notification was filed, the requirements of the act must thereafter be observed with respect to any notification threshold not met or exceeded.

Example: "A" files notification that in excess of \$100 million (as adjusted) of the voting securities of corporation B are to be acquired. One year after the expiration of the waiting period, "A" has acquired less than \$100 million (as adjusted) of B's voting securities. Although § 802.21 will permit "A" to purchase any amount of B's voting securities short of \$100 million (as adjusted) within 5 years from the expiration of the waiting period, A's holdings may not meet or exceed the \$100 million (as adjusted) notification threshold without "A" and "B" again filing notification and observing a waiting period.

(b) *Upon failure to comply with request for additional information.* An acquiring person's notification and, in the case of an acquisition to which § 801.30 does not apply, an acquired person's notification, shall expire eighteen months following the date of receipt of such person's notification if a request for additional information or documentary material remains outstanding to such person (or entities included therein, officers, directors, partners, agents or employees thereof), without a certification as required by § 803.6(b), on such date. If either person's notification expires pursuant to this paragraph, both parties must file a new notification in order to carry out the transaction.

Example: A files notification on January 15 of Year 1 to acquire voting securities of B. On February 15 of Year 1, prior to expiration of the waiting period, requests for additional information or documentary material are issued to A and B. Before A supplies the information and documentary material requested, business conditions change, and A and B decide not to go forward with the transaction. A does not withdraw its filing and takes the position that it will comply with the request for additional information and documentary material if and when the proposed transaction is ever revived. A's notification expires July 15 of Year 2, eighteen months following the date of receipt of its notification. If A and B wish to revive their

Federal Trade Commission

§ 803.9

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]

§ 803.8 Foreign language documents.

(a) Whenever at the time of filing a Notification and Report Form there is an English language outline, summary, extract or verbatim translation of any information or of all or portions of any documentary materials in a foreign language required to be submitted by the act or these rules, all such English language versions shall be filed along with the foreign language information or materials.

(b) Documentary materials or information in a foreign language required to be submitted in responses to a request for additional information or documentary material shall be submitted with verbatim English language translations, or all existing English language versions, or both, as specified in such request.

[48 FR 34440, July 29, 1983]

§ 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 aggregate total amount of the acquisition is less than \$100 million (as adjusted), but greater than \$50 million (as adjusted).

2. "A" acquires less than \$50 million (as adjusted) of assets from "B." The parties meet the size of person criteria of Section 7A(a)(2)(B), but the transaction is not reportable because it does not exceed the \$50 million (as adjusted) size of transaction threshold of that provision. Two months later "A" acquires additional assets from "B" valued at between \$50 million (as adjusted) and \$100 million (as adjusted). Pursuant to the aggregation requirements of § 801.13(b)(2)(ii), the aggregate total amount of "B's" assets that "A" will hold as a result of the second acquisition

is in excess of \$100 million (as adjusted). Accordingly, when "A" files notification for the second transaction, "A" must indicate the \$100 million (as adjusted) threshold and pay a filing fee of \$125,000 because the aggregate total amount of the acquisition is less than \$500 million (as adjusted), but not less than \$100 million (as adjusted).

3. "A" acquires in excess of \$50 million (as adjusted) of voting securities issued by B after submitting its notification and \$45,000 filing fee and indicates the \$50 million (as adjusted) threshold. Two years later, "A" files to acquire additional voting securities issued by B valued at \$50 million (as adjusted) because it will exceed the next higher reporting threshold (*see* §§ 801.1(h)). Assuming the second transaction is reportable and the value of its initial holdings is unchanged (*see* §§ 801.13(a)(2) and 801.10(c)), the provisions of § 801.13(a)(1) require that "A" report that the value of the second transaction is in excess of \$100 million (as adjusted) because "A" must aggregate previously acquired securities in calculating the value of B's voting securities that it will hold as a result of the second acquisition. "A" should pay a filing fee of \$125,000.

4. "A" signs a contract with a stated purchase price in excess of \$100 million (as adjusted), subject to adjustments, to acquire all of the assets of "B." If the amount of adjustments can be reasonably estimated, the 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 delegee must also 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.