

Federal Trade Commission

§ 801.15

in accordance with § 801.10(b) as of the time of their prior acquisition.

Example: Acquiring person "A" proposes to make two acquisitions of assets from acquired person "B," 90 days apart, and wishes to determine whether notification is necessary prior to the second acquisition. For purposes of the size-of-transaction tests in Section 7A(a)(2), "A" must aggregate both of its acquisitions and must value each as of the time of its occurrence.

[43 FR 33537, July 31, 1978, as amended at 52 FR 7081, Mar. 6, 1987; 66 FR 8689, Feb. 1, 2001]

§ 801.14 Aggregate total amount of voting securities and assets.

For purposes of Section 7A(a)(2) and § 801.1(h), the aggregate total amount of voting securities and assets shall be the sum of:

(a) The value of all voting securities of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(a); and

(b) The value of all assets of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(b).

Examples: 1. Acquiring person "A" previously acquired \$36 million of the voting securities (not convertible voting securities) of corporation X. "A" now intends to acquire \$8 million of X's assets. Under paragraph (a) of this section, "A" looks to § 801.13(a) and determines that the voting securities are to be held "as a result of" the acquisition. Section 801.13(a) also provides that "A" must determine the present value of the previously acquired securities. Under paragraph (b) of this section, "A" looks to § 801.13(b)(1) and determines that the assets to be acquired will be held "as a result of" the acquisition, and are valued under § 801.10(b) at \$8 million. Therefore, if the voting securities have a present value of more than \$42 million, the asset acquisition is subject to the requirements of the act since, as a result of it, "A" would hold an aggregate total amount of the voting securities and assets of "X" in excess of \$50 million.

2. In the previous example, assume that the assets acquisition occurred first, and that the acquisition of the voting securities is to occur within 180 days of the first acquisition. "A" now looks to § 801.13(b)(2) and determines that the previously acquired assets are not treated "as part of the present acquisition" because the second acquisition is of voting securities and not assets; thus, the asset and voting securities acquisitions are not treated as one transaction. Therefore,

the second acquisition would not be subject to the requirements of the act since the value of the securities to be acquired does not exceed the \$50 million size-of-transaction test.

[43 FR 33537, July 31, 1978, as amended at 66 FR 8689, Feb. 1, 2001; 67 FR 11902, Mar. 18, 2002]

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of determining the aggregate total amount of voting securities and assets of the acquired person held by the acquiring person under Section 7A(a)(2) and § 801.1(h), none of the following will be held as a result of an acquisition:

(a) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under—

(1) Sections 7A(c) (1), (5), (6), (7), (8), and (11)(B);

(2) Sections 802.1, 802.2, 802.5, 802.6(b)(1), 802.8, 802.31, 802.35, 802.52, 802.53, 802.63, and 802.70 of this chapter;

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under Section 7A(c)(9) and §§ 802.3, 802.4, 802.50(a), 802.51(a), 802.51(b) and 802.64 of this chapter unless the limitations contained in Section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

(c) Voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(11)(A) unless additional voting securities of the same issuer have been or are being acquired.

Examples: 1. Assume that acquiring person "A" is simultaneously to acquire \$51 million of the convertible voting securities of X and \$12 million of the voting common stock of X. Since the overall value of the voting securities to be acquired (§ 801.1 defines convertible voting securities as "voting securities") is