

market value of \$28 million. Since "X" acquired a minority interest in M and intends to acquire a minority interest in N, and since M and N are controlled by "Z," the assets of M and N must be aggregated, pursuant to §§ 801.15(b) and 801.13, to determine whether the acquisition of N's voting securities is exempt or whether it is reportable pursuant to the terms of § 802.4(c) of this chapter. "X" is required to determine the current fair market value of M's assets. If the fair market value of M's coal reserves is unchanged, the aggregated exempt assets do not exceed the limitation for coal reserves under § 802.3(b) of this chapter. However, if the present fair market value of N's non-exempt assets also is unchanged, the present fair market value of the non-exempt assets of M and N when aggregated is greater than \$50 million. Thus the acquisition of the voting securities of N is not exempt under § 802.4 of this chapter. If "X" proposed to acquire 50 percent or more of the voting securities of both M and N in the same acquisition, the assets of M and N must be aggregated to determine if the acquisition of the voting securities of both issuers is exempt. Since the fair market value of the aggregated non-exempt assets exceeds \$50 million, the acquisition would not be exempt.

8. "A" acquired 49 percent of the voting securities of M and 45 percent of the voting securities of N. Both M and N are controlled by "B." At the time of the acquisition, M held rights to producing coal reserves worth \$90 million and N held a producing coal mine worth \$90 million. This acquisition was exempt since the aggregated holdings fell below the \$200 million limitation for coal in § 802.3(b) of this chapter. A year later, "A" proposes to acquire an additional 10 percent of the voting securities of both M and N. In the intervening year, M has acquired coal reserves so that its holdings are now valued at \$140 million, and the value of N's assets remained unchanged. "A's" second acquisition would not be exempt. "A" is required to determine the value of the exempt assets and any non-exempt assets held by any issuer whose voting securities it intends to acquire before each proposed acquisition (unless "A" already owns 50 percent or more of the voting securities of the issuer) to determine if the value of those holdings of the issuer falls below the limitation of the applicable exemption. Here, the holdings of M and N now exceed the \$200 million exemption for acquisitions of coal reserves in § 802.3 of this chapter, and thus do not qualify for the exemption of voting securities provided by § 802.4(a) of this chapter.

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§ 801.20 Acquisitions subsequent to exceeding threshold.

Acquisitions meeting the criteria of section 7A(a), and not otherwise exempted by section 7A(c) or § 802.21 or any other of these rules, are subject to the requirements of the act even though:

(a) Earlier acquisitions of assets or voting securities may have been subject to the requirements of the act;

(b) The acquiring person's holdings initially may have met or exceeded a notification threshold before the effective date of these rules; or

(c) The acquiring person's holdings initially may have met or exceeded a notification threshold by reason of increases in market values or events other than acquisitions.

Examples: 1. Person "A" acquires \$10 million of the voting securities of person "B" before the effective date of these rules. If "A" wishes to acquire an additional \$41 million of the voting securities of "B" after the effective date of the rules, notification will be required by reason of Section 7A(a)(2).

2. In example 1, assume that the value of the voting securities of "B" originally acquired by "A" has reached a present value exceeding \$50 million. If "A" wishes to acquire any additional voting securities or assets of "B," notification will be required. See § 801.13(a).

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§ 801.21 Securities and cash not considered assets when acquired.

For purposes of determining the aggregate total amount of assets under Section 7A(a)(2) and § 801.13(b):

(a) Cash shall not be considered an asset of the person from which it is acquired; and

(b) Neither voting or nonvoting securities nor obligations referred to in section 7A(c)(2) shall be considered assets of another person from which they are acquired.

Examples: 1. Assume that acquiring person "A" acquires voting securities of issuer X from "B," a person unrelated to X. Under this paragraph, the acquisition is treated only as one of voting securities, requiring "A" and "X" to comply with the requirements of the act, rather than one in which "A" acquires the assets of "B," requiring "A" and "B" to comply. See also example 2 to § 801.30. Note that for purposes of section