

other entertainment activities. "X" will provide office space in the complex for "Y", a management company which will maintain and manage the facility for "X." This acquisition is an exempt acquisition of investment rental property assets since "X" intends to rent the facility to third parties and is providing space within the facility to a management company solely to maintain, manage or supervise the operation of the facility on its behalf. If, however, "X" controls Z, a concert promoter to whom it also intends to rent the complex, the acquisition would not be exempt under § 802.5, since the property would not meet the requirements of § 802.5(b)(1).

2. "X" intends to buy from "Y" a development commonly referred to as an industrial park. The industrial park contains a warehouse/distribution center, a retail tire and automobile parts store, an office building, and a small factory. The industrial park also contains several parcels of vacant land. If "X" intends to acquire this industrial park as investment rental property, the acquisition will be exempt pursuant to § 802.5. If, however, "X" intends to use the factory for its own manufacturing operations, this exemption would be unavailable. The exemptions in § 802.2 for warehouses, rental retail space, office buildings, and undeveloped land may still apply and, if the value of the factory is \$50 million or less, the entire transaction may be exempted by that section.

[61 FR 13688, Mar. 28, 1996, as amended at 66 FR 8693, Feb. 1, 2001]

§ 802.6 Federal agency approval.

(a) For the purposes of section 7A (c)(6) and (c)(8), the term *information and documentary material* includes one copy of all documents, application forms, and all written submissions of any type whatsoever. In lieu of providing all such information and documentary material, or any portion thereof, one copy of an index describing such information and documentary material may be provided, together with a certification that any such information or documentary material not provided will be provided within 10 calendar days upon request by the Federal Trade Commission or Assistant Attorney General, or a delegated official of either. Any material submitted pursuant to this section shall be submitted to the offices specified in § 803.10(c).

(b)(1) A mixed transaction is one that has some portion that is exempt under Section 7A (c)(6), (c)(7) or (c)(8) because it requires regulatory agency premerger competitive review and ap-

proval, and another portion that does not require such review.

(2) The portion of a mixed transaction that does not require advance competitive review and approval by a regulatory agency is subject to the act and these rules as if it were being acquired in a separate acquisition.

Example: Bank "A" acquires Bank "B", which owns a financial subsidiary engaged in securities underwriting. "A"'s acquisition of "B" requires agency approval by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System or Federal Deposit Insurance Corporation (depending on whether "A" is a national bank, state member bank, or state non-member bank under section 18(c) of the FDI Act), and therefore is exempt from filing under Section 7A (c)(7). However, the acquisition of the financial subsidiary is subject to HSR reporting requirements, and "A" and "B" each must make a filing for that portion of the transaction and observe the waiting period if the act's thresholds are met.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34435, July 29, 1983; 66 FR 8693, Feb. 1, 2001; 67 FR 11903, Mar. 18, 2002]

§ 802.8 Certain supervisory acquisitions.

(a) A merger, consolidation, purchase of assets, or acquisition requiring agency approval under sections 403 or 408(e) of the National Housing Act, 12 U.S.C. 1726, 1730a(e), or under section 5 of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464, shall be exempt from the requirements of the act, including specifically the filing requirement of Section 7A(c)(8), if the agency whose approval is required finds that approval of such merger, consolidation, purchase of assets, or acquisition is necessary to prevent the probable failure of one of the institutions involved.

(b)(1) A merger, consolidation, purchase of assets, or acquisition which requires agency approval under 12 U.S.C. 1817(j) or 12 U.S.C. 1730(q) shall be exempt from the requirements of the act if copies of all information and documentary materials filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed acquisition.

(2) A transaction described in paragraph (b)(1) of this section shall be exempt from the requirements of the act, including specifically the filing requirement, if the agency whose approval is required finds that approval of such transaction is necessary to prevent the probable failure of one of the institutions involved.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34436, July 29, 1983; 67 FR 11903, Mar. 18, 2002]

§ 802.9 Acquisition solely for the purpose of investment.

An acquisition of voting securities shall be exempt from the requirements of the act pursuant to section 7A(c)(9) if made solely for the purpose of investment and if, as a result of the acquisition, the acquiring person would hold ten percent or less of the outstanding voting securities of the issuer, regardless of the dollar value of voting securities so acquired or held.

Examples: 1. Suppose that acquiring person “A” acquires 6 percent of the voting securities of issuer X, valued at \$52 million. If the acquisition is solely for the purpose of investment, it is exempt under Section 7A(c)(9).

2. After the acquisition in example 1, “A” decides to acquire an additional 7 percent of the voting securities of X. Regardless of “A”’s intentions, the acquisition is not exempt under section 7A(c)(9).

3. After the acquisition in example 1, acquiring person “A” decides to participate in the management of issuer X. Any subsequent acquisitions of X stock by “A” would not be exempt under section 7A(c)(9).

[43 FR 33544, July 31, 1978, as amended at 66 FR 8693, Feb. 1, 2001]

§ 802.10 Stock dividends and splits.

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

§ 802.20 [Reserved]

§ 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold.

(a) An acquisition of voting securities shall be exempt from the requirements of the act if:

(1) The acquiring person and all other persons required by the act and these rules to file notification filed notification with respect to an earlier acquisition of voting securities of the same issuer;

(2) The waiting period with respect to the earlier acquisition has expired, or been terminated pursuant to § 803.11, and the acquisition will be consummated within 5 years of such expiration or termination; and

(3) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold greater than the greatest notification threshold met or exceeded in the earlier acquisition.

Examples: 1. Corporation A acquires \$53 million of the voting securities of corporation B and both “A” and “B” file 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 or 50 percent of the voting securities of B. No additional notification is required.

2. In Example 1, “A” continues to acquire B’s securities. Before “A’s” holdings meet or exceed \$100 million or 50 percent of B’s outstanding voting securities, “A” and “B” must file notification and wait the prescribed period, regardless of whether the acquisition occurs within five years after the expiration of the earlier waiting period.

3. In Example 2, suppose that “A” and “B” file notification at the \$500 million level and that, within 5 years after expiration of the waiting period, “A” continues to acquire voting securities of B. No further notification is required until “A” plans to make the acquisition that will give it 25 percent of B’s voting securities valued at over \$1 billion; or 50 percent ownership of B. (Once “A” holds 50 percent, further acquisitions of voting securities are exempt under Section 7A(c)(3)).

4. This section also allows a person to reclass any of the threshold notification levels—\$50 million, \$100 million, \$500 million, 25 percent (if valued over \$1 billion) and 50 percent—any number of times within 5 years of the expiration of the waiting period following notification for that level. 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. Similarly, in Examples 2 and 3, “A” could decrease its holdings below, and then