

## Federal Trade Commission

## § 802.51

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to §801.40(d)(2) of this chapter) are less than \$110 million; and

(4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

*Example to §802.50:* 1. Assume that "A" and "B" are both U.S. persons. "A" proposes selling to "B" a manufacturing plant located abroad. Sales in or into the United States attributable to the plant totaled \$13 million in the most recent fiscal year. The transaction is exempt under this paragraph (a) of this section.

2. Sixty days after the transaction in example 1, "A" proposes to sell to "B" a second manufacturing plant located abroad; sales in or into the United States attributable to this plant totaled \$38 million in the most recent fiscal year. Since "B" would be acquiring the second plant within 180 days of the first plant, both plants would be considered assets of "A" held by "B" as a result of the second acquisition (see §801.13(b)(2) of this chapter). Since the total sales in or into the United States exceed \$50 million, the acquisition of the second plant would not be exempt under this paragraph (a) of this section.

3. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States of \$200 million. If "A" acquires only foreign assets of "B," and if those assets generated \$50 million or less in sales in or into the United States, the transaction is exempt.

4. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States and assets located in the United States of less than \$100 million. If "A" acquires only foreign assets of "B", and those assets generated in excess of \$50 million in sales in or into the United States during the most recent fiscal year, the transaction is exempt from reporting if the assets are valued at \$200 million or less, but is reportable if valued at greater than \$200 million.

[67 FR 11903, Mar. 18, 2002]

### § 802.51 Acquisitions of voting securities of a foreign issuer.

(a) *By U.S. persons.* (1) The acquisition of voting securities of a foreign issuer by a U.S. person shall be exempt from the requirements of the act unless the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other

than investment assets, voting or nonvoting securities of another person, and assets included pursuant to §801.40(d)(2) of this chapter) having an aggregate total value of over \$50 million; or made aggregate sales in or into the United States of over \$50 million in its most recent fiscal year.

(2) If interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either \$50 million threshold is exceeded.

(b) *By foreign persons.* (1) The acquisition of voting securities of a foreign issuer by a foreign person shall be exempt from the requirements of the act unless the acquisition will confer control of the issuer and the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to §801.40(d)(2) of this chapter) having an aggregate total value of over \$50 million; or made aggregate sales in or into the United States of over \$50 million in its most recent fiscal year.

(2) If controlling interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either \$50 million threshold is exceeded.

(c) Where a foreign issuer whose securities are being acquired exceeds the threshold in paragraph (b)(1) of this section, the acquisition nevertheless shall be exempt where:

(1) Both acquiring and acquired persons are foreign;

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than \$110 million in their respective most recent fiscal years;

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to §801.40(d)(2) of

## § 802.52

this chapter) are less than \$110 million; and

(4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

*Example to § 802.51 1.* "A," a U.S. person, is to acquire the voting securities of C, a foreign issuer. C has no assets in the United States, but made aggregate sales into the United States of \$77 million in the most recent fiscal year. The transaction is not exempt under this section.

2. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States of \$200 million, and that "A" is acquiring 100% of the voting securities of "B." Included within "B" is U.S. issuer C, whose total U.S. assets are valued at \$161 million. Since "A" will be acquiring control of an issuer, C, with total U.S. assets of more than \$50 million, and the parties' aggregate sales in or into the U.S. in the relevant time period exceed \$110 million, the acquisition is not exempt under this section.

3. "A," a foreign person, intends to acquire 100 percent of the voting securities of two wholly owned subsidiaries of "B" for a total of \$65 million. BSUB1 is a foreign issuer with \$10 million in sales into the U.S. in its most recent fiscal year and with assets of \$10 million located in the U.S. \$20 million of the acquisition price has been allocated to BSUB1. BSUB2 is a U.S. issuer with \$60 million in U.S. sales and \$60 million in assets located in the U.S. The remaining \$45 million of the acquisition price is allocated to BSUB2. Since BSUB1 does not exceed the \$50 million limitation for U.S. sales or assets in § 802.51(b), its voting securities are not held as a result of the acquisition (see § 801.15(b) of this chapter). Since the acquisition price for BSUB2 alone would not result in "A" holding in excess of \$50 million of voting securities of the acquired person, the transaction is non-reportable in its entirety. Note that the U.S. sales and assets of BSUB1 are not aggregated with those of BSUB2 for purposes of determining whether the limitations in paragraph (b) of this section are exceeded. If BSUB2 were also a foreign issuer, such aggregation would be required under paragraph (b)(2) of this section, and the transaction in its entirety would be reportable.

[67 FR 11904, Mar. 18, 2002; 67 FR 13716, Mar. 26, 2002]

## § 802.52 Acquisitions by or from foreign governmental corporations.

An acquisition shall be exempt from the requirements of the act if:

(a) The ultimate parent entity of either the acquiring person or the acquired person is controlled by a foreign state, foreign government, or agency thereof; and

## 16 CFR Ch. I (1-1-05 Edition)

(b) The acquisition is of assets located within that foreign state or of voting securities of an issuer organized under the laws of that state.

*Example:* The government of foreign country X has decided to sell assets of its wholly owned corporation, B, all of which are located in foreign country X. The buyer is "A," a U.S. person. Regardless of the aggregate sales in or into the United States attributable to the assets of B, the transaction is exempt under this section. (If such aggregate sales were \$50 million or less, the transaction would also be exempt under § 802.50.)

[43 FR 33544, July 31, 1978, as amended at 67 FR 11904, Mar. 18, 2002]

## § 802.53 Certain foreign banking transactions.

An acquisition which requires the consent or approval of the Board of Governors of the Federal Reserve System under section 25 or section 25(a) of the Federal Reserve Act, 12 U.S.C. 601, 615, shall be exempt from the requirements of the act if copies of all information and documentary material filed with the Board of Governors are contemporaneously filed with the Federal Trade Commission and Assistant Attorney General at least 30 days prior to consummation of the acquisition. In lieu of such information and documentary material or any portion thereof, an index describing such material may be provided in the manner authorized by § 802.6(a).

[43 FR 33544, July 31, 1978, as amended at 48 FR 34435, July 29, 1983]

## § 802.60 Acquisitions by securities underwriters.

An acquisition of voting securities by a person acting as a securities underwriter, in the ordinary course of business, and in the process of underwriting, shall be exempt from the requirements of the act.

## § 802.63 Certain acquisitions by creditors and insurers.

(a) *Creditors.* An acquisition of collateral or receivables, or an acquisition in foreclosure, or upon default, or in connection with the establishment of a lease financing, or in connection with a bona fide debt work-out shall be exempt from the requirements of the act if made by a creditor in a bona fide