

credit transaction entered into in the ordinary course of the creditor's business.

(b) *Insurers.* An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations shall be exempt from the requirements of the act if made by an insurer in the ordinary course of business.

Examples: 1. A bank makes a loan and takes actual or constructive possession of collateral in any form. Since the bank is not the beneficial owner of the collateral, the bank's receipt of it is not an acquisition which is subject to the requirements of the act. However, if upon default the bank becomes the beneficial owner of the collateral, that acquisition is exempt under this section.

2. This section exempts only the acquisition by the creditor or insurer, and not the subsequent disposition of the assets or voting securities. If a creditor or insurer sells voting securities or assets that have come into its possession in a transaction which is exempt under this section, the requirements of the act may apply to that disposition.

§ 802.64 Acquisitions of voting securities by certain institutional investors.

(a) *Institutional investor.* For purposes of this section, the term *institutional investor* means any entity of the following type:

- (1) A bank within the meaning of 15 U.S.C. 80b-2(a)(2);
- (2) Savings bank;
- (3) Savings and loan or building and loan company or association;
- (4) Trust company;
- (5) Insurance company;
- (6) Investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.);
- (7) Finance company;
- (8) Broker-dealer within the meaning of 15 U.S.C. 78c(a)(4) or (a)(5);
- (9) Small Business Investment Company or Minority Enterprise Small Business Investment Company regulated by the U.S. Small Business Administration pursuant to 15 U.S.C. 662;
- (10) A stock bonus, pension, or profit-sharing trust qualified under section 401 of the Internal Revenue Code;
- (11) Bank holding company within the meaning of 12 U.S.C. 1841;

(12) An entity which is controlled directly or indirectly by an institutional investor and the activities of which are in the ordinary course of business of the institutional investor;

(13) An entity which may supply incidental services to entities which it controls directly or indirectly but which performs no operating functions, and which is otherwise engaged only in holding controlling interests in institutional investors; or

(14) A nonprofit entity within the meaning of sections 501(c) (1) through (4), (6) through (15), (17) through (20), or (d) of the Internal Revenue Code.

(b) *Exemption.* An acquisition of voting securities shall be exempt from the requirements of the act, except as provided in paragraph (c) of this section, if:

- (1) Made directly by an institutional investor;
- (2) Made in the ordinary course of business;
- (3) Made solely for the purpose of investment; and
- (4) As a result of the acquisition the acquiring person would hold fifteen percent or less of the outstanding voting securities of the issuer.

(c) *Exception to exemption.* Notwithstanding paragraph (b) of this section:

- (1) No acquisition of voting securities of an institutional investor of the same type as any entity included within the acquiring person shall be exempt under this section; and
- (2) No acquisition by an institutional investor shall be exempt under this section if any entity included within the acquiring person which is not an institutional investor holds any voting securities of the issuer whose voting securities are to be acquired.

Examples: 1. Assume that A and its subsidiary, B, are both institutional investors as defined in paragraph (a) of this section, that X is not, and that the conditions set forth in paragraphs (b)(2), (3) and (4) of this section are satisfied. Either A or B may acquire voting securities of X worth in excess of \$50 million as long as the aggregate amount held by person "A" as a result of the acquisition does not exceed 15 percent of X's outstanding voting securities. If the aggregate holdings would exceed 15 percent, "A" may acquire no more than \$50 million worth of voting securities without being subject to the requirements of the act.

§ 802.70

2. In example 1, assume that B plans to make the acquisition, but that corporation B's parent, corporation A, is not an institutional investor and is engaged in manufacturing. Subparagraph (c)(2) provides that acquisitions by B can never be exempt under this section if A owns any amount of X's voting securities.

3. In example 1, the exemption does not apply if X is also an institutional investor of the same type as either A or B.

4. Assume that H is a holding company which controls a life insurance company, a casualty insurer and a finance company. The life insurance company controls a data processing company which performs services for the two insurers. Any acquisition by any of these entities could qualify for exemption under this section.

5. In example 4, if H also controls a manufacturing entity, H is not an institutional investor, and only the acquisitions made by the two insurance companies, the finance company and the data processing company can qualify for the exemption under this section.

[43 FR 33544, July 31, 1978, as amended at 66 FR 8694, Feb. 1, 2001]

§ 802.70 Acquisitions subject to order.

An acquisition shall be exempt from the requirements of the act if the voting securities or assets are to be acquired from an entity pursuant to and in accordance with:

(a) An order of the Federal Trade Commission or of any Federal court in an action brought by the Federal Trade Commission or the Department of Justice;

(b) An Agreement Containing Consent Order that has been accepted by the Commission for public comment, pursuant to the Commission's Rules of Practice; or

(c) A proposal for a consent judgment that has been submitted to a Federal court by the Federal Trade Commission or the Department of Justice and that is subject to public comment.

[63 FR 34594, June 25, 1998]

§ 802.71 Acquisitions by gift, intestate succession or devise, or by irrevocable trust.

Acquisitions resulting from a gift, intestate succession, testamentary disposition or transfer by a settlor to an irrevocable trust shall be exempt from the requirements of the act.

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

PART 803—TRANSMITTAL RULES

Sec.

803.1 Notification and Report Form.

803.2 Instructions applicable to Notification and Report Form.

803.3 Statement of reasons for noncompliance.

803.4 Foreign persons refusing to file notification.

803.5 Affidavits required.

803.6 Certification.

803.7 Expiration of notification.

803.8 Foreign language documents.

803.9 Filing fee.

803.10 Running of time.

803.11 Termination of waiting period.

803.20 Requests for additional information or documentary material.

803.21 Additional information shall be supplied within reasonable time.

803.30 Formal and informal interpretations of requirements under the Act and the rules.

803.90 Separability.

APPENDIX TO PART 803—ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

AUTHORITY: 15 U.S.C. 18a(d).

SOURCE: 43 FR 33548, July 31, 1978, unless otherwise noted.

§ 803.1 Notification and Report Form.

(a) The notification required by the act shall be the Notification and Report Form set forth in the appendix to this part (803), as amended from time to time. All acquiring and acquired persons required to file notification by the act and these rules shall do so by completing and filing the Notification and Report Form, or a photostatic or other equivalent reproduction thereof, in accordance with the instructions thereon and these rules. Copies of the Notification and Report Form may be obtained in person from the Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC, 20580, or by writing to the Premerger Notification Office, Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Notification and Report Form also can be downloaded from the Federal Trade Commission's web site at www.ftc.gov.

(b) Any person filing notification may, in addition to the submissions required by this section, submit any