§ 801.13 Aggregation of voting securities, assets and non-corporate interests.

(a) Voting securities. (1) Subject to the provisions of §801.15, and paragraph (a)(3) of this section, all voting securities of the issuer which will be held by the acquiring person after the consummation of an acquisition shall be deemed voting securities held as a result of the acquisition. The value of such voting securities shall be the sum of the value of the voting securities to be acquired, determined in accordance with §801.10(a), and the value of the voting securities held by the acquiring person prior to the acquisition, determined in accordance with paragraph (a)(2) of this section.

(2) The value of voting securities of an issuer held prior to an acquisition shall be—

(i) if the security is traded on a national securities exchange or is authorized to be quoted in an interdealer quotation system of a national securities association registered with the United States Securities and Exchange Commission, the market price calculated in accordance with §801.10(c)(1); or

(ii) if paragraph (a)(2)(i) of this section is not applicable, the fair market value determined in accordance with §801.10(c)(3).

Examples: 1. Assume that acquiring person “A” holds in excess of $50 million (as adjusted) of the voting securities of X, and is to acquire another $1 million of the same voting securities. Since under paragraph (a) of this section all voting securities “A” will hold after the acquisition are held “as a result of” the acquisition, “A” will hold in excess of $50 million (as adjusted) of the voting securities of X as a result of the acquisition. “A” must therefore observe the requirements of the act before making the acquisition, unless the present acquisition is exempt under Section 7A(c), §802.21 or any other rule.

2. See §801.15 and the examples to that rule.

3. See §801.20 and the examples to that rule.

4. On January 1, company A acquired in excess of $50 million (as adjusted) of voting securities of company B. “A” and “B” filed notification and observed the waiting period for that acquisition. Company A plans to acquire $1 million of assets from company B on May 1 of the same year. Under §801.15(a)(3), “A” and “B” do not aggregate the value of the earlier acquired voting securities to determine whether the acquisition is subject to the act. Therefore, the value of the acquisition is $1 million and it is not reportable.

(b) Assets. (1) All assets to be acquired from the acquired person shall be assets held as a result of the acquisition. The value of such assets shall be determined in accordance with §801.10(b).

(ii) If the acquiring person signs a letter of intent or agreement in principle to acquire assets from an acquired person, and within the previous 180 days the acquiring person has

(i) Signed a letter of intent or agreement in principle to acquire assets from the same acquired person, which
4. On day 1, A consummates an acquisition of assets of B valued at $45 million. On day 60, A consummates a sale of the same assets to an unrelated third party. On day 120, A enters into an agreement to acquire additional assets of B valued at $45 million. Because A no longer holds the assets from the previous acquisition, no aggregation of the two asset acquisitions is required and A may acquire all of the additional assets without filing notification.

(c)(1) Non-corporate interests. In an acquisition of non-corporate interests, any previously acquired non-corporate interests in the same unincorporated entity is aggregated with the newly acquired interests. The value of such an acquisition is determined in accordance with §801.10(d) of these rules.

(2) Other assets or voting securities of the same acquired person. An acquisition of non-corporate interests which does not confer control of the unincorporated entity is not aggregated with any other assets or voting securities which have been or are currently being acquired from the same acquired person.

Examples: 1. A currently has the right to 30 percent of the profits in LLC. B has the right to the remaining 70 percent. A acquires an additional 30 percent interest in LLC from B for $90 million in cash. As a result of the acquisition, A is deemed to now have a 60 percent interest in LLC. The current acquisition is valued at $90 million, the acquisition price. The value of the 30 percent interest that A already holds is the fair market value of that interest. The value for size-of-transaction purposes is the sum of the two.

2. A acquires the following from B: (1) all of the assets of a subsidiary of B; (2) all of the voting securities of another subsidiary of B; and (3) a 30 percent interest in an LLC which is currently wholly-owned by B. In determining the size-of-transaction, A aggregates the value of the voting securities and assets of the subsidiaries that it is acquiring from B, but does not include the value of the 30 percent interest in the LLC, pursuant to §801.13(c)(2).

§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).