§ 801.15 Aggregation of voting securities, non-corporate interests and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of determining the aggregate total amount of voting securities, non-corporate interests and assets of the acquiring person under Section 7A(a)(2) and § 801.1(h), none of the following will be held as a result of an acquisition:

(a) Assets, non-corporate interests or voting securities the acquisition of which was exempt, had the act and these rules been in effect, or the present acquisition of which is exempt, under—

(1) Sections 7A(c)(1), (3), (5), (6), (7), (8), and (11)(B);

(2) Sections 802.1, 802.2, 802.5, 802.6(b)(1), 802.8, 802.30, 802.31, 802.35, 802.52, 802.53, 802.63, and 802.70 of this chapter;

(b) Assets, non-corporate interests or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the Act and these rules been in effect), or the present acquisition of which is exempt, under Section 7A(c)(9) and §§802.3, 802.4, and 802.64 of this chapter unless the limitations contained in Section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

(c) Voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the Act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(11)(A) unless additional voting securities of the same issuer have been or are being acquired; and

(d) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the Act and these rules been in effect), or the present acquisition of which is exempt, under §§802.50(a), 802.51(a), 802.51(b) of this chapter unless the limitations, in aggregate for §§802.50(a), 802.51(a), 802.51(b), do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held.

Examples: 1. Assume that acquiring person “A” now intends to acquire additional assets of corporation X. “A” now looks to §801.13(a) and determines that the voting securities are to be held “as a result of” the acquisition. A Section 801.13(a) also provides that “A” must determine the present value of the previously acquired securities. Under paragraph (b) of this section, “A” looks to §801.13(b)(1) and determines that the assets to be acquired will be held “as a result of” the acquisition, and are valued under §801.10(b). Therefore, if the voting securities have a present value which when combined with the value of the assets would exceed $50 million (as adjusted), the asset acquisition is subject to the requirements of the act since, as a result of it, “A” would hold an aggregate total amount of the voting securities and assets of “X” in excess of $50 million (as adjusted).

2. In the previous example, assume that the assets acquisition occurred first, and that the acquisition of the voting securities is to occur within 180 days of the first acquisition. “A” now looks to §801.13(b)(2) and determines that because the second acquisition is of voting securities and not assets, the asset and voting securities acquisitions are not treated as one transaction. Therefore, the second acquisition would not be subject to the requirements of the act since the value of the securities to be acquired does not exceed the $50 million (as adjusted) size-of-transaction test.

(c) The value of all non-corporate interests of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with §801.13(c).

(a) Assume that acquiring person “A” is simultaneously to acquire in excess of $50 million (as adjusted) of the convertible voting securities of X and less than $50 million (as adjusted) of the voting common stock of X. Although the acquisition of the convertible voting securities is exempt under §802.31, since the overall value of the securities to be acquired is greater than $50 million (as adjusted), “A” must determine whether it is obliged to file notification and observe a waiting period before acquiring the securities. Because §802.31 is one of the exemptions listed in paragraph (a)(2) of this section, “A”...
would not hold the convertible voting securities as a result of the acquisition. Therefore, since as a result of the acquisition "A" would hold only the common stock, the size-of-transaction tests of Section 7A(a)(2) would not be satisfied, and "A" need not observe the requirements of the act before acquiring the common stock. (Note, however, that the value of the assets of "X" would be reflected in "A's" next regularly prepared balance sheet, for purposes of §801.11.)

2. In the previous example, the rule was applied to voting securities the present acquisition of which is exempt. Assume instead that "A" had acquired the convertible voting securities prior to its acquisition of the common stock. "A" still would not hold the convertible voting securities as a result of the acquisition of the common stock, because the rule states that voting securities the previous acquisition of which was exempt also fall within the rule. Thus, the size-of-transaction tests of Section 7A(a)(2) would again not be satisfied, and "A" need not observe the requirements of the act before acquiring the common stock.

3. In example 2, assume instead that "A" acquired the convertible voting securities in 1975, before the act and rules went into effect. Since the rule applies to voting securities the acquisition of which would have been exempt had the act and rules been in effect, the result again would be identical. If the rules had been in effect in 1975, the acquisition of the convertible voting securities would have been exempt under §802.31.

4. Assume that acquiring person "B," a United States person, acquired from corporation "X" two manufacturing plants located abroad, and assume that the acquisition price was in excess of $50 million (as adjusted). In the most recent year, sales into the United States attributable to the plants were less than $50 million (as adjusted), and thus the acquisition was exempt under §802.4(a). Within 180 days of that acquisition, "B" seeks to acquire a third plant from "X," to which United States sales were attributable in the most recent year. Since under §801.13(b)(2), as a result of the acquisition, "B" would hold all three plants of "X," if the $50 million (as adjusted) limitation in §802.50(a)(2) would be exceeded, under paragraph (b) of this section, "B" would hold the previously acquired assets for purposes of the second acquisition. Therefore, as a result of the second acquisition, "B" would hold assets of "X" exceeding $50 million (as adjusted) in value, would not qualify for the exemption in §802.50(a)(2), and must observe the requirements of the act and file notification for the acquisition of all three plants before acquiring the third plant.

5. "A" acquires producing oil reserves valued at $75 million from "B." Paragraph (b) of this section and §801.15(b)(2) require aggregating the previously exempt acquisition of oil reserves with the second acquisition. If the two acquisitions, when aggregated, exceed the $500 million limitation on the exemption for oil and gas reserves in §802.3(a), "A" and "B" will be required to file notification for the second acquisition, which would be reflected in "A's" next regularly prepared balance sheet, for purposes of §801.11.

6. "X" acquired 55 percent of the voting securities of M, an entity controlled by "Z," six months ago and now proposes to acquire 50 percent of the voting stock of N, another entity controlled by "Z." M's assets consist of $150 million worth of producing coal reserves plus less than $50 million (as adjusted) worth of non-exempt assets and N's assets consist of a producing coal mine worth $100 million together with non-exempt assets with a fair market value of less than $50 million (as adjusted). "X"'s acquisition of the voting securities of M was exempt under §802.4(a) because M held exempt assets pursuant to §802.3(b) and less than $50 million (as adjusted) of non-exempt assets. Because "X" acquired control of M in the earlier transaction, M is now within the person of "X," and the assets of M need not be aggregated with those of N to determine if the subsequent acquisition of N will exceed the limitation for coal reserves or for non-exempt assets. Since the assets of N alone do not exceed these limitations, "X"'s acquisition of N also is not reportable.

7. In previous Example 6, assume that "X" acquired 30 percent of the voting securities of M and proposes to acquire 40 percent of the voting securities of N, another entity controlled by "Z." Assume also that M's assets at the time of "X"'s acquisition of M's voting securities consisted of $90 million worth of producing coal reserves and non-exempt assets with a fair market value of less than $50 million (as adjusted), and that N's assets currently consist of $60 million worth of producing coal reserves and non-exempt assets with a fair market value which when aggregated with M's non-exempt assets would exceed $50 million (as adjusted). 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
§ 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.

§ 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)(A), Section 7A(a)(2)(B)(i), Sec. 801.13(b), and Sec. 802.4:

(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. See also example 2 to §801.30. Note that for purposes of section 7A(a)(2)—that is, for the next regularly prepared balance sheet of “A,” referred to in §801.11—the voting securities of X must be