§ 802.4 Acquisitions of voting securities of issuers or non-corporate interests in unincorporated entities holding certain assets the acquisition of which is exempt.

(a) An acquisition of voting securities of an issuer or non-corporate interests in an unincorporated entity whose assets together with those of all entities it controls consist or will consist of assets whose acquisition is exempt from the requirements of the Act pursuant to section 7A(c) of the Act, this part 802, or pursuant to §801.21, is exempt from the reporting requirements if the acquired issuer or unincorporated entity and all entities it controls do not hold non-exempt assets with an aggregate fair market value of more than $50 million (as adjusted). The value of voting or non-voting securities of any other issuer or interests in any unincorporated entity not included within the acquired issuer or unincorporated entity does not count toward the $50 million (as adjusted) limitation for non-exempt assets.

(b) For purposes of paragraph (a) of this section, the assets of all issuers and unincorporated entities that are being acquired from the same acquired person are included in determining if the limitation for non-exempt assets is exceeded.

(c) In connection with paragraph (a) of this section and §801.15 (b), the value of the assets of an issuer whose voting securities or an unincorporated entity whose non-corporate interests are being acquired pursuant to this section shall be the fair market value, determined in accordance with §801.10(c).

Examples: 1. “A,” a real estate investment company, proposes to purchase 100 percent of the voting securities of C, a wholly-owned subsidiary of “B,” a construction company. C’s assets consist of a newly constructed, fully occupied hotel, including fixtures, furnishings and insurance policies. The acquisition of the hotel would be exempt under §802.2(a) as a new facility and under §802.2(d). Therefore, the acquisition of the voting securities of C is exempt pursuant to §802.4(a) since C holds assets whose direct purchase would be exempt under §802.2 and does not hold non-exempt assets exceeding $50 million (as adjusted) in value.

2. “A” proposes to acquire 60 percent of the voting securities of C from “B.” C’s assets consist of a portfolio of mortgages valued at $55 million and a small manufacturing plant valued at $25 million. The manufacturing plant is an operating unit for purposes of §802.4(a). Since the acquisition of the mortgages would be exempt pursuant to Section 7A(c)(2) of the Act and since the value of the non-exempt manufacturing plant is less than $50 million (as adjusted), this acquisition is exempt under §802.4(a).

3. “A” proposes to acquire from “B” 100 percent of the voting securities of each of three issuers, M, N and O, simultaneously. M’s assets consist of oil reserves worth $160 million and coal reserves worth $40 million. N has assets consisting of $130 million of gas reserves and $100 million of coal reserves. O’s assets are oil shale reserves worth $40 million and a coal mine worth $30 million. Since “A” is simultaneously acquiring the voting securities of three issuers from the same acquired person, it must aggregate the assets of the issuers to determine if any of the limitations in §802.3 is exceeded. As a result of aggregating the assets of M, N and O, “A’s” holdings of oil and gas reserves are below the $500 limitation for such assets in §802.3(a). However, the aggregated holdings exceed the $200 million limitation for coal reserves in §802.3(b). “A’s” acquisition therefore is not exempt, and it must report the entire transaction.