

§ 802.50

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section remain subject to all other provisions of the act and these rules.

[48 FR 34436, July 29, 1983]

§ 802.50 Acquisitions of foreign assets or of voting securities of a foreign issuer by United States persons.

(a) *Assets.* In a transaction in which assets located outside the United States are being acquired by a U.S. person:

(1) The acquisition of assets located outside the United States, to which no sales in or into the United States are attributable, shall be exempt from the requirements of the act; and

(2) The acquisition of assets located outside the United States, to which sales in or into the United States are attributable, shall be exempt from the requirements of the act unless as a result of the acquisition the acquiring person would hold assets of the acquired person to which such sales aggregating \$25 million or more during the acquired person's most recent fiscal year were attributable.

Examples: 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 \$8 million in the most recent fiscal year. The transaction is exempt under this paragraph.

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 \$20 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" now held by "B". See § 801.13(b)(2). Since the total annual sales in or into the United States exceed \$215 million, the acquisition of the second plant would not be exempt under this paragraph.

(b) *Voting securities.* An 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:

(1) 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(c)(2)) having an aggregate book value of \$15 million or more; or

(2) Made aggregate sales in or into the United States of \$25 million or more in its most recent fiscal year.

Example: "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 \$27 million in the most recent fiscal year. The transaction is not exempt under this section.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34437, July 29, 1983]

§ 802.51 Acquisitions by foreign persons.

An acquisition by a foreign person shall be exempt from the requirements of the act if:

(a) The acquisition is of assets located outside the United States;

(b) The acquisition is of voting securities of a foreign issuer, and will not confer control of:

(1) An issuer which 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(c)(2)) having an aggregate book value of \$15 million or more, or

(2) A U.S. issuer with annual net sales or total assets of \$25 million or more;

(c) The acquisition is of less than \$15 million of assets located in the United States (other than investment assets); or

(d) The acquired person is also a foreign person, the aggregate annual sales of the acquiring and acquired persons in or into the United States are less than \$110 million, and 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(c)(2)) are less than \$110 million.

Examples: 1. Assume that "A" and "B" are foreign persons with aggregate annual sales in or into the United States of \$200 million. If "A" acquires the assets of "B," and if no assets in the United States or voting securities of U.S. issuers will be acquired, the transaction is exempt under paragraphs (a) and (c).

2. In example 1, assume that "A" is acquiring "B's" stock and that included within

Federal Trade Commission

§ 802.64

“B” is issuer C, a U.S. issuer whose total assets are valued at \$27 million. Since C’s voting securities will be acquired indirectly, and since “A” thus will be acquiring control of a U.S. issuer with total assets of more than \$25 million, the acquisition cannot be exempt under this section.

3. In the previous examples, assume that “A” is a U.S. person. This section does not apply, since the acquiring person must be a foreign person.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34437, July 29, 1983]

§ 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

(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 annual sales in or into the United States attributable to the assets of B, the transaction is exempt under this section. (If such aggregate annual sales were less than \$10 million, the transaction would also be exempt under § 802.50.)

§ 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 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;