

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;

- (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.

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,