

management company which will maintain and manage the facility for "X." This acquisition is an exempt acquisition of investment rental property assets since "X" intends to rent the facility to third parties and is providing space within the facility to a management company solely to maintain, manage or supervise the operation of the facility on its behalf. If, however, "X" controls Z, a concert promoter to whom it also intends to rent the complex, the acquisition would not be exempt under §802.5, since the property would not meet the requirements of §802.5(b)(1).

2. "X" intends to buy from "Y" a development commonly referred to as an industrial park. The industrial park contains a warehouse/distribution center, a retail tire and automobile parts store, an office building, and a small factory. The industrial park also contains several parcels of vacant land. If "X" intends to acquire this industrial park as investment rental property, the acquisition will be exempt pursuant to §802.5. If, however, "X" intends to use the factory for its own manufacturing operations, this exemption would be unavailable. The exemptions in §802.2 for warehouses, rental retail space, office buildings, and undeveloped land may still apply and, if the value of the factory is \$50 million or less, the entire transaction may be exempted by that section.

[61 FR 13688, Mar. 28, 1996, as amended at 66 FR 8693, Feb. 1, 2001]

#### §802.6 Federal agency approval.

(a) For the purposes of section 7A (c)(6) and (c)(8), the term *information and documentary material* includes one copy of all documents, application forms, and all written submissions of any type whatsoever. In lieu of providing all such information and documentary material, or any portion thereof, one copy of an index describing such information and documentary material may be provided, together with a certification that any such information or documentary material not provided will be provided within 10 calendar days upon request by the Federal Trade Commission or Assistant Attorney General, or a delegated official of either. Any material submitted pursuant to this section shall be submitted to the offices specified in §803.10(c).

(b)(1) Except as provided in §802.6(b)(2), any transaction which requires approval by the Civil Aeronautics Board prior to consummation, pursuant to section 408 of the Federal Aviation Act, 49 U.S.C. 1378, shall be

exempt from the requirements of the act if copies of all information and documentary material filed with the Civil Aeronautics Board are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General.

(2) The following will be considered assets held as a result of an acquisition requiring approval by the Civil Aeronautics Board pursuant to section 408 of the Federal Aviation Act, and such assets will not be exempt under §802.6(b)(1):

(i) If the transaction is an acquisition of assets, the assets which are engaged in a business or businesses other than aeronautics or air transportation as defined in section 101 of the Federal Aviation Act, 49 U.S.C. 1301;

(ii) If the transaction is an acquisition of voting securities, or is treated under the rules as an acquisition of voting securities, and the acquiring person will, as a result of the acquisition, hold voting securities of the acquired person valued in excess of \$50 million, the business or businesses of the acquired issuer (and all entities which it controls) which are not engaged in aeronautics or air transportation as defined in section 101 of the Federal Aviation Act, 49 U.S.C. 1301.

*Example:* Assume that A (an entity included within person "A") proposes to acquire voting securities of B (an entity included within person "B") for \$100 million. A and B are both air carriers who meet the size-of-person test, but B also owns a commercial data processing business located in the United States with a value of \$60 million. Assume that this transaction requires CAB approval under 49 U.S.C. 1378. Since the acquired person has a business other than aeronautics or air transportation, the parties must report under §802.6(b)(2) because the parties meet the size-of-person test, no other exemption applies to the acquisition of the data processing business, and the acquisition of the non-aeronautic business is deemed to be an acquisition of assets valued at \$60 million.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34435, July 29, 1983; 66 FR 8693, Feb. 1, 2001]

#### §802.8 Certain supervisory acquisitions.

(a) A merger, consolidation, purchase of assets, or acquisition requiring agency approval under sections 403 or 408(e)

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of the National Housing Act, 12 U.S.C. 1726, 1730a(e), or under section 5 of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464 shall be exempt from the requirements of the Act, including specifically the filing requirement of section 7A(c)(8), if the agency whose approval is required finds that approval of such merger, consolidation, purchase of assets, or acquisition is necessary to prevent the probable failure of one of the institutions involved.

(b)(1) A merger, consolidation, purchase of assets, or acquisition which requires agency approval under 12 U.S.C. 1817(j) or 12 U.S.C. 1730(q) shall be exempt from the requirements of the act if copies of all information and documentary materials filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed acquisition.

(2) A transaction described in paragraph (b)(1) of this section shall be exempt from the requirements of the act, including specifically the filing requirement, if the agency whose approval is required finds that approval of such transaction is necessary to prevent the probable failure of one of the institutions involved.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34436, July 29, 1983]

## § 802.9 Acquisition solely for the purpose of investment.

An acquisition of voting securities shall be exempt from the requirements of the act pursuant to section 7A(c)(9) if made solely for the purpose of investment and if, as a result of the acquisition, the acquiring person would hold ten percent or less of the outstanding voting securities of the issuer, regardless of the dollar value of voting securities so acquired or held.

*Examples:* 1. Suppose that acquiring person "A" acquires 6 percent of the voting securities of issuer X, valued at \$52 million. If the acquisition is solely for the purpose of investment, it is exempt under Section 7A(c)(9).

2. After the acquisition in example 1, "A" decides to acquire an additional 7 percent of the voting securities of X. Regardless of "A"'s intentions, the acquisition is not exempt under section 7A(c)(9).

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3. After the acquisition in example 1, acquiring person "A" decides to participate in the management of issuer X. Any subsequent acquisitions of X stock by "A" would not be exempt under section 7A(c)(9).

[43 FR 33544, July 31, 1978, as amended at 66 FR 8693, Feb. 1, 2001]

## § 802.10 Stock dividends and splits.

The acquisition of voting securities, pursuant to a stock split or pro rata stock dividend, shall be exempt from the requirements of the act under section 7A(c)(10).

## § 802.20 [Reserved]

## § 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold.

(a) An acquisition of voting securities shall be exempt from the requirements of the act if:

(1) The acquiring person and all other persons required by the act and these rules to file notification filed notification with respect to an earlier acquisition of voting securities of the same issuer;

(2) The waiting period with respect to the earlier acquisition has expired, or been terminated pursuant to § 803.11, and the acquisition will be consummated within 5 years of such expiration or termination; and

(3) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold greater than the greatest notification threshold met or exceeded in the earlier acquisition.

*Examples:* 1. Corporation A acquires \$53 million of the voting securities of corporation B and both "A" and "B" file notification as required, indicating the \$50 million threshold. Within five years of the expiration of the original waiting period, "A" acquires additional voting securities of B but not in an amount sufficient to meet or exceed \$100 million or 50 percent of the voting securities of B. No additional notification is required.

2. In Example 1, "A" continues to acquire B's securities. Before "A's" holdings meet or exceed \$100 million or 50 percent of B's outstanding voting securities, "A" and "B" must file notification and wait the prescribed period, regardless of whether the acquisition occurs within five years after the expiration of the earlier waiting period.

3. In Example 2, suppose that "A" and "B" file notification at the \$500 million level and that, within 5 years after expiration of the