

Section 802.4

*A tip sheet from the Premerger
Notification Office*

May 5, 2008

The problem:

What is the interplay between determining the value of voting securities or non-corporate interests to be held as a result of the acquisition and determining whether the acquisition is exempt under Section 802.4?

Follow this simple two step analysis.

Step 1

Determine the value of the voting securities or non-corporate interests to be held as a result of the acquisition using the appropriate prong of Section 801.10.

Does this value exceed \$50 million (as adjusted)?

- ❖ If *NO*, you're done. The transaction is not reportable.
- ❖ If *YES*, proceed to Step 2.

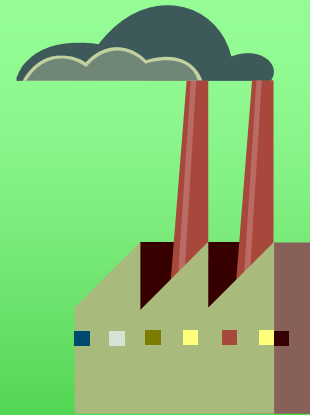
Step 2

Analyze the transaction to determine if it is exempt under Section 802.4.

(Note that the size-of-transaction that was determined in STEP 1 does not change at any subsequent point in STEP 2.)

How do I determine if the transaction is exempt under Section 802.4?

First, determine all of the underlying assets held by the issuer or unincorporated entity whose voting securities or non-corporate interests are being acquired and any entity it **CONTROLS**.

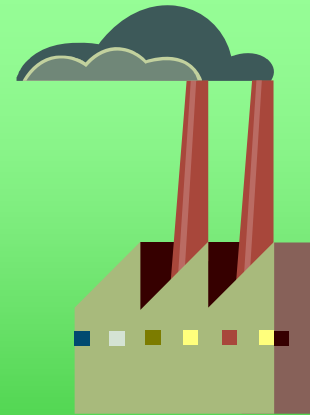


Once you have determined the pool of underlying assets, analyze them as if you are making an acquisition of the assets with an undetermined acquisition price.

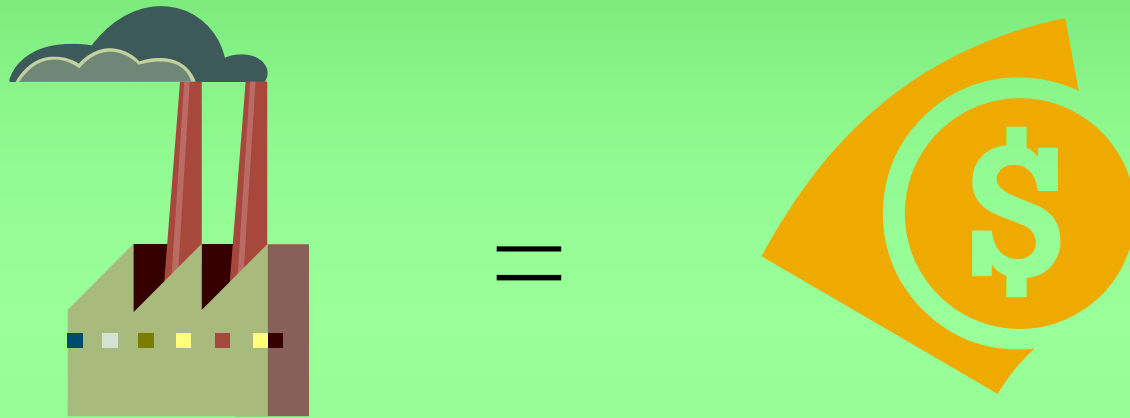
This means using a good faith determination of **fair market value**. (see <http://ftc.gov/bc/hsr/hsrvaluation.shtm>)

Then, determine which (if any) of the assets are **exempt** under any provision in 7A(c) of the statute, Part 802 of the rules or Section 801.21 (cash and cash equivalents).

Take the exempt assets out of the analysis.



Finally, determine the fair market value of the remaining non-exempt assets.



If that value exceeds \$50 million (as adjusted),

the acquisition of the voting securities or non-corporate interests is **REPORTABLE**.

If it's reportable, what transaction value do I use?

If, after your Step 2 analysis, you have non-exempt assets over \$50 million (as adjusted), you would file for the transaction value determined in Step 1.

If the value does not exceed \$50 million (as adjusted),

the acquisition of the voting securities or non-corporate interests is **EXEMPT** under Section 802.4, regardless of the size-of-transaction.

**If you have any further questions, please
contact the Premerger Office.**

The views expressed by this presentation do not necessarily
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