



HART-SCOTT-RODINO

PREMERGER NOTIFICATION PROGRAM

STEPS FOR APPLYING SECTION 802.4

In an acquisition of voting securities or non-corporate interests, Section 802.4 allows you to look through to the underlying assets of the issuer or non-corporate entity to determine whether an HSR filing is required. If the acquisition of the assets would be exempt if acquired directly, Section 802.4 can exempt the acquisition of the issuer or non-corporate entity that holds the assets.

Step 1: Determine the value of the voting securities or non-corporate interests to be acquired using the appropriate section of Section 801.10.

- If the value is \$50 million (as adjusted) or less,¹ the transaction is not reportable.
- If the value exceeds \$50 million (as adjusted), 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.

- 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, calculate their value as if you are making an acquisition of the assets with an undetermined acquisition price. This means using **fair market valuation**.
- 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 calculation.
- Determine the fair market value of the remaining non-exempt assets.

If the fair market value exceeds \$50 million (as adjusted), the acquisition of the voting securities or non-corporate interests is reportable and the value is the size of transaction determined in Step 1.

If the fair market value is \$50 million (as adjusted) or less, the acquisition of the voting securities or non-corporate interests is exempt under Section 802.4, regardless of the size of transaction.

¹ This number is adjusted annually based on the change in the level of gross national product. For the current thresholds go to the HSR website.