



Ordinary Course of Business Transactions
&
Real Property Exemptions

§ 18a(c)(1) – Statutory exemption for “goods or realty transferred in the ordinary course of business”:

Typical classes of covered transactions:

- **acquisitions essential to operation of manufacturing, retailing and wholesaling businesses**
- **acquisitions from original equipment manufacturers of productive assets**

§ 802.1 – Acquisitions of goods and realty in the ordinary course of business

- first promulgated in 1978; revised in 1996
- defines four categories of goods:
 - (a) operating unit– NOT an ordinary course of business acquisition
 - (b) new goods
 - (c) current supplies
 - (d) used durable goods – exemption LIMITED to four classes of goods

§ 802.2 – Certain acquisitions of real property assets.

- authority: U.S.C. § 18a(d)(2)(B)
- exempts acquisitions of abundant assets in unconcentrated markets
- NOT limited by “operating unit” exclusion
- in mixed acquisition, “carve out” provided for § 802.2 assets

§ 802.2 exempts acquisitions of eight types of real property

- (a) new facilities**
- (b) used facilities**
- (c) unproductive real property**
- (d) office and residential property**
- (e) hotels and motels**
- (f) recreational land**
- (g) agricultural property (revised 3/18/02)**
- (h) retail rental space; warehouses**

§ 802.5 – Acquisitions of investment rental property assets.

- **designed to supplement § 802.2**
- **defined as real property held solely for rental or investment purposes**
- **includes (1) property currently rented; (2) property held for rent; (3) common areas; and (4) incidental assets**
- **in mixed acquisition, “carve out” provided for § 802.5 assets**

§ 802.3 – Acquisitions of carbon-based mineral reserves.

- exempts acquisitions of oil and natural gas reserves, rights to oil and natural gas reserves and associated exploration or production assets [defined in § 802.3(c)], if total value does not exceed \$500MM
- exempts acquisitions of coal reserves of coal, rights to coal reserves and associated exploration or production assets if total value does not exceed \$200 MM
- in mixed acquisition, “carve out” provided for § 802.3 assets

§ 802.4 – Acquisitions of voting securities of issuers holding certain assets the direct acquisition of which is exempt.

- **revision of § 802.1(a) of 1978**
- **exempts acquisitions of voting stock of an issuer holding only assets, the purchase of which would be exempt under § 802.2, § 802.3 or § 802.5, so long as issuer and its controlled entities do not hold more than \$50 MM of non-exempt assets**
- **value of acquired issuer's assets is fair market value, determined pursuant to § 801.10(c)**



**End
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