FEDERAL TRADE COMMISSION

[16 CFR Part 801]

MERGERS AND ACQUISITIONS

Proposed Rulemaking

The Clayton Act, 15 U.S.C. Sec. 12 et seq., as amended by Sections 201 and 202 of the "Hart-Scott-Rodino Antitrust Improvements Act of 1976," Pub. L. 94-435, 15 U.S.C. Sec. 18A (hereafter the "Antitrust Improvements Act"), requires persons contemplating certain direct or indirect mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter the "Assistant Attorney General") advance notice and to wait certain designated periods before consummation of such plans. The transactions to which the advance notice requirement is applicable and the length of the waiting periods required are set out in the Antitrust Improvements Act, the complete text of which is set out below. The amendment to the Clayton Act does not change the standards to be used in determining the legality of mergers and acquisitions.

Subsection 7A(d)(1) of the amended Clayton Act, 15 U.S.C. Sec. 18A(d)(1), directs the Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with 5 U.S.C. Sec. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsections 7A(d)(2)(A)-(C) of the amended Act, 15 U.S.C. 18A(d)(2)(A)-(C), grant the Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with 5 U.S.C. 553, the authority (1) to define the terms used in the amendment; (2) to exempt additional persons from the Act's notice and waiting period requirements; and (3) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of Section 7A.

Section 7A of the amended Clayton Act, 15 U.S.C. Section 18A, provides:

TITLE II—PREMERGER NOTIFICATION

NOTIFICATION AND WAITING PERIOD

Sec. 201. The Clayton Act (15 U.S.C. 12 et seq.) is amended by inserting immediately after section 7 of such Act the following new section:

"Sec. 7A. (a) Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if—

"(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce;

"(2)(A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more;

"(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more; or

"(C) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 or more are being acquired by any person with total assets or annual net sales of $10,000,000 or more; and

"(3) as a result of such acquisition, the acquiring person would hold—

"(A) 15 per centum or more of the voting securities or assets of the acquired person, or

"(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d).

"(b)(1) The waiting period required under subsection (a) shall—

"(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the 'Assistant Attorney General') of—

"(i) the completed notification required under subsection (a), or

"(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

"(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2).

"(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the FEDERAL REGISTER a notice that neither intends to take any action within such period with respect to such acquisition.

"(3) As used in this section—

"(A) The term 'voting securities' means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

"(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

"(c) The following classes of transactions are exempt from the requirements of this section—

"(1) acquisitions of goods or realty transferred in the ordinary course of business;

"(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

"(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisitions;

"(4) transfers to or from a Federal agency or a State or political subdivision thereof;

"(5) transactions specifically exempted from the antitrust laws by Federal statute;

"(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

"(7) transactions which require agency approval under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828 (c)), or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842);

"(8) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843), section 403 and 408(e) of the National Housing Act 12 U.S.C. 1726 and 1730a), or section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), if copies of all information and documentary material 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 transaction;

"(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

"(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

"(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

"(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B).

"(d) The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, United States Code, consistent with the purposes of this section—

"(1) shall require that the notification required under subsection (a) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisitions may, if consummated, violate the antitrust laws; and

"(2) may—

"(A) define the terms used in this section;

"(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

"(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

"(e)(1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

"(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period)

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specified in subsection (b) (1) of this section for an additional period of not more than 20 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g) (2).

"(f) If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 7 of this Act or section 5 of the Federal Trade Commission Act, or an action is filed by the United States, alleging that a proposed acquisition violates such section 7 or section 1 or 2 of the Sherman Act, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies to the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection—

"(A) upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes; and

"(B) the motion for a preliminary injunction shall be set down for hearing by the district judge so designated at the earliest practicable time, shall take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, United States Code, and shall be in every way expedited.

"(g) (1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

"(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) or any request for the submission of additional information or documentary material under subsection (e) (1) of this section within the waiting period specified in subsection (b) (1) and as may be extended under subsection (e) (2), the United States district court—

"(A) may order compliance;

"(B) shall extend the waiting period specified in subsection (b) (1) and as may have been extended under subsection (e) (2) until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

"(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

"(h) Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

"(i) (1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

"(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act, the Federal Trade Commission Act, or any other provision of law.

"(j) Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.".

EFFECTIVE DATES

Sec. 202. (a) The amendment made by section 201 of this Act shall take effect 150 days after the date of enactment of this Act, except that subsection (d) of section 7A of the Clayton Act (as added by section 201 of this Act) shall take effect on the date of enactment of this Act.

Pursuant to subsections 7A(d) (1) and 7A(d) (2) (A)–(C) the Commission hereby proposes and offers for comment the following notification requirement: The notification required by section 201 of the Antitrust Improvements Act shall consist of complete and correct answers to the items and instructions set forth in the following form, except as otherwise provided in the rules.

The notification form here proposed implements the Antitrust Improvements Act, which becomes effective on February 27, 1977. The current Federal Trade Commission pre-merger notification program [1] will be in effect until the effective date of the notification and relevant rules, the complete text of which follows:

STATEMENT OF TRANSITIONAL POLICY WITH RESPECT TO EFFECTIVE DATE OF PRE-MERGER NOTIFICATION PROGRAM

Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 becomes effective on February 27, 1977. The Act may be interpreted to require, absent specific termination of the statutory waiting period for particular transactions, the imposition of a moratorium of thirty days on all qualifying acquisitions and mergers, and of fifteen days on all qualifying cash tender offers, after that date. The Federal Trade Commission and the Assistant Attorney General do not believe it was the intention of Congress to impose such a moratorium. Accordingly, the Commission proposes the following Transitional Rule relating to mergers, acquisitions and cash tender offers scheduled to occur on or soon after February 27, 1977. The Transitional Rule also encompasses the possibility that the effective date of the notification form and rules (other than the Transitional Rule) may be later than February 27, 1977.

TRANSITIONAL RULE

(a) This rule is promulgated under the authority of subsection (d) (2) (C) of section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 15 U.S.C. Sec. 18A, hereinafter referred to as "this section." References to specific subsections refer to subsections thereof.

(b) An acquisition shall be exempt from all requirements of this section if made on or after February 27, 1977, and before the effective date of the Notification and Report Form and rules promulgated by the Federal Trade Commission under the authority of this section (hereinafter referred to as the "Form" and "rules" respectively). Such date shall be identified in the FEDERAL REGISTER at least thirty days in advance.

(c) (1) An acquisition made on or after the effective date of the Form and rules shall be exempt from the wating period required by subsection (b), except as provided by subparagraph (2) of this paragraph, if:

(A) All persons required by this section and the rules to file notification with respect to such acquisition, file notification with both the Federal Trade Commission and the Assistant Attorney General, in the manner prescribed by the rules, on the effective date of the Form and rules. Notification received by the Federal Trade Commission and Assistant Attorney General prior to the effective date of the rules shall be deemed to be filed on the effective date of the Form and rules;

(B) Neither the Federal Trade Commission nor the Assistant Attorney General requests additional information or documentary material, pursuant to subsection (e) and rule 3.30, from any person filing notification with respect to such acquisition, prior to the consummation of the acquisition; and

[1] Federal Trade Commission, Corporate Mergers or Acquisitions, Notification and Special Reports, published in the FEDERAL REGISTER, page 35717, Vol. 39, No. 193, October 3, 1974.

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(C) The acquisition is consummated no later than thirty (or, in the case of cash tender offers, as defined in the rules, fifteen) calendar days after the effective date of the Form and rules.

(2) In the event of a request for additional information or documentary material, the waiting period normally deriving from such a request, pursuant to subsection (e) and rule 3.30, shall take effect at the time of such request, and shall expire or be terminated or extended thereafter in accordance with this section and the rules.

(d) All acquisitions otherwise subject to the requirements of this section, and not falling within paragraphs (b) or (c) of this rule, shall be subject to the requirements of this section and the rules.

STATEMENT WITH RESPECT TO CERTAIN FINANCIAL TRANSACTIONS AND INSTITUTIONS

The Federal Trade Commission and Assistant Attorney General are uncertain of the proper role to assign subsection (c)(11). Specifically, the agencies wish to learn with what frequency, and under what circumstances, do banks, banking associations, trust companies, investment companies, and insurance companies acquire voting securities pursuant to a plan of reorganization or dissolution, or assets (as distinguished from securities) in the normal course of business. Likewise, the agencies wish to know to what extent the reporting and waiting requirements of this section may impede normal business practices by such companies. During the period for public comment, statements to this end will be particularly welcome. In the interim, no rule has been proposed.

The Federal Trade Commission and the Assistant Attorney General also are uncertain as to whether the proposed Notification and Report Form is appropriate for the reporting of any mergers, acquisitions, or joint ventures, other than those undertaken in the ordinary course of business, involving financial institutions, which may not be exempt from the requirements of this section under subsection (c)(6), (c)(8), or any other relevant exemption. During the period for public comment, statements to this end, or suggestions as to an appropriate form, will also be particularly welcome.

The Commission proposes the following amendment to Title 16, Chapter I, by adding a new Subchapter H—Rules, Regulations, Statements and Interpretations under the Hart-Scott-Rodino Antitrust Improvements Act of 1976—and new Parts 801, 802, and 803 under that subchapter (Part 800 would be reserved).

SUBCHAPTER H—RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER THE HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

PART 800—[RESERVED]

PART 801—DEFINITIONS AND COVERAGE RULES

Sec.
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§ 801.05 Definitions.

When used in this section and these rules—

(a) *Person.* The term "person" includes any individual, corporation, company, partnership, association, joint stock company, trust, foundation, fund, institution, society, union, club or other group of individuals organized for any purpose, whether incorporated or not, wherever located and of whatever citizenship; or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his capacity as such; together with any and all of the foregoing controlled by, controlling, or under common control with, such person. *Provided however,* That the term "person" shall not include any foreign state, government, or agency thereof (other than a corporation engaged in commerce or in any activity affecting commerce): *And provided further,* That the word "controlling" in this paragraph shall not act to include individuals in their capacities as directors or officers of corporations, or in the case of unincorporated persons, individuals exercising similar functions.

Example: In the case of corporations, this definition includes the entire corporate structure instead of, all parent corporations, subsidiaries and divisions (whether consolidated or unconsolidated, whether incorporated or unincorporated), and all sister corporations under common control with any of the foregoing. It includes controlling shareholders but excludes officers and directors who are not controlling shareholders.

(b) *Control.* The term "control" (as used in the terms "control," "controlling," "controlled by," and "under common control with") means either (1) the ownership of 50 percent or more of the outstanding voting securities of an issuer; or (2) the power, whether or not exercised, to formulate, determine, direct, cause or veto the direction of the management, policy or decisions of a person, whether through the ownership of a dominant minority of the total outstanding voting securities of an issuer or person controlling the issuer, proxy voting, contractual arrangements, agents, or other means: *Provided however,* That control shall not include any such power arising exclusively from contractual conditions in a contract relating to financing by a bank, banking association, trust company, investment company, or insurance company.

(c) *Hold.* The term "hold" (as used in the terms "hold," "holds," "holding" and "held") means the possession of either (1) ownership, whether effected directly or indirectly through agents, brokers, nominees, or other means; or (2) control.

(d) *Affiliate.* A person is an "affiliate" of another person if either (1) such person holds 5 per centum or more of the outstanding voting securities of the other person; (2) 5 per centum or more of the outstanding voting securities of such person are held by the other person; or (3) such person is an officer, director, or partner of the other person.

(e) *Security.* The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or to purchase, any of the foregoing.

(f) *Tender Offer.* The term "tender offer" means an offer published, sent, or given to security holders of the issuer whose voting securities are sought to be acquired, requesting that all or a portion of a class of an issuer's voting securities be deposited during a fixed period of time so that the acquiring person may acquire such securities at a specified price (whether cash, securities, or a combination thereof), subject to specified conditions.

(g) *Cash Tender Offer.* The term "cash tender offer" means a tender offer in which cash is the only consideration offered to the holders of the securities sought to be acquired.

(h) *Engaged in manufacturing.* A person shall be deemed to be "engaged in manufacturing" if it produces and derives sales or revenues from any product within industries 2000–3999 as coded in Appendix B to the Standard Industrial Classification Manual (1972 edition) published by the Executive Office of the President, Office of Management and Budget.

(i) *United States.* The term "United States" shall include the United States, commonwealths and territories thereof, and the District of Columbia.

(j) *This Section.* References to "this section" refer to section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 15 U.S.C. 18A. References to specific subsections refer to subsections thereof.

§ 801.10 Mergers and consolidations.

(a) A merger, consolidation, or other equivalent transaction combining the business of two or more persons wherein the several parties to the transaction may not be readily identifiable as an "acquiring person" or an "acquired person" shall be deemed to be an acquisition subject to this section.

(b) References in this section and these rules to the "aquiring person" or the "acquired person" shall be considered references to either or any party to such a transaction.

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§ 801.15 Activities in or affecting commerce.

Subsection (a)(1) is satisfied if the acquiring person, as defined in § 801.05, or the person, as defined in § 801.05, whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce, as commerce is defined in the Clayton Act, 15 U.S.C. 12, or the Federal Trade Commission Act, 15 U.S.C. 44

Example: A foreign subsidiary of a United States corporation seeks to acquire a foreign business. The acquiring person is the United States parent corporation. Because the United States corporation is engaged in commerce, the acquisition falls within the language of subsection (a)(1). Note, however, that § 802.35 may exempt certain transactions otherwise within subsection (a)(1).

§ 801.20 Value of securities and assets.

(a) *Securities.* For the purposes of this section, the value of securities shall be determined as follows:

(1) If market quotations are readily available, the value shall be the market quotation on any day within fifteen calendar days before the filing of the notification required by this section, or the acquisition price, whichever is greater.

(2) If market quotations are not readily available, the value shall be the fair market value on any day within fifteen calendar days before the filing of the notification required by this section, as determined in good faith by the board of directors of the acquiring person, or in the case of acquiring persons lacking directors, other officials exercising similar functions; or the acquisition price, whichever is greater.

(b) *Assets.* For purposes of this section, the value of assets which are to be acquired shall be the fair market value on any day within a fifteen calendar days before the filing of the notification required by this section, as determined in good faith by the board of directors, or in the case of acquiring persons lacking directors, other officials exercising similar functions; or the book value; or the acquisition price, whichever is greatest.

(c) *Securities as consideration.* When securities constitute all or part of the consideration for the acquisition, the securities shall be valued according to paragraph (a) of this section.

§ 801.25 Annual net sales and total assets.

For the purposes of subsections (a)(2) and (a)(3):

(a) The annual net sales and total assets of a person shall be as stated on the latest certified financial statement(s) of the person, prepared in accordance with Regulation S-X of the United States Securities and Exchange Commission, which shall be as of a date not more than one year prior to the date of notification under this section.

(b) If a material change has occurred in net sales or total assets of the person subsequent to the date of the last certified financial statement(s), which change could reasonably be expected to increase the amounts stated thereon to in excess of the criteria of subsection (a)(2), the person must either prepare a new statement(s) in accordance with Regulation S-X or must observe the requirements of this section as though such a new statement(s) had been prepared and the net sales or total assets shown thereon had exceeded such criteria.

(c) The annual net sales or total assets of a person include the annual net sales or non-duplicative total assets of any and all persons controlling, controlled by, or under common control with, such person, whether such sales or assets are foreign or domestic, except as provided in paragraph (d) of this section.

Example: A United States subsidiary of a foreign corporation seeks to acquire a United States business. The annual net sales and total assets of the acquiring person include the annual net sales and total assets of the parent foreign corporation as well as of the United States subsidiary.

(d) No assets of any natural person (other than assets of a partnership which is a person subject to the requirements of this section) shall be included in determining the total assets of a person.

§ 801.30 Calculating percentage of securities or assets acquired.

(a) *Voting securities.* Any issuer whose voting securities are being acquired shall be deemed an "acquired person" in calculating the percentage of voting securities acquired for purposes of subsection (a)(3)(A).

Example: Corporation A proposes to acquire 100 percent of the stock of corporation S, a wholly-owned subsidiary of the larger corporation B. A is considered to be acquiring 100 percent of the voting stock of S, and not merely some lesser percentage of the assets of the larger parent B, and the acquisition would exceed the 15 percent criterion in subsection (a)(3)(A).

(b) *Assets.* Any separately identifiable person, as defined in § 801.05(a), and excluding all persons controlled by, controlling, or under common control with such person, whose assets are being acquired, shall be deemed to be an "acquired person" in calculating the percentage of assets acquired for purposes of subsection (a)(3)(A).

Example: Corporation A proposes to acquire 100 percent of the assets of corporation S, a wholly-owned subsidiary of the larger corporation B. A is considered to be acquiring 100 percent of the assets of S, and not merely some lesser percentage of the assets of the larger parent B, and the acquisition would exceed the 15 percent criterion in subsection (a)(3)(A).

§ 801.35 Accumulation of assets.

(a) For purposes of subsection (a)(3)(B) but not for purposes of subsection (a)(3)(A), assets previously acquired by the acquiring person from the acquired person shall be deemed assets of the acquired person, if acquired by the acquiring person within 180 calendar days of the date of filing of the notification required by this section.

(b) The value of such assets shall be calculated in accordance with § 801.20(b), as of the time of their acquisition.

§ 801.40 Aggregate total amount of voting securities and assets.

For the purposes of subsection (a)(3)(B), the aggregate total amount of voting securities and assets shall be the sum of:

(a) The value, calculated in accordance with § 801.20(a), of all voting securities of the acquired person which the acquiring person would hold as a result of the acquisition; and

(b) the value of all assets of the acquired person, calculated in accordance with §§ 801.20(b) and 801.35, which the acquiring person would hold as a result of the acquisition.

Example: Corporation B possessed assets valued at $100-million in January. Corporation A, engaged in commerce and possessing assets of $200-million, acquired $7-million of B's assets in February, and intends to acquire voting securities of B valued at $9-million in March. The March acquisition would be subject to the requirements of this section since, as its result, A would hold an aggregate total amount of the voting securities and assets of B in excess of $15-million.

§ 801.45 Incremental acquisitions.

Only an acquisition "as a result of which" the acquiring person's holdings actually would meet or exceed the threshold levels of subsection (a)(3) shall be subject to the requirements of the section. Any particular acquisition, even though part of a sequence eventually attaining the threshold levels of subsection (a)(3), need not observe the requirements of the section if as a result of the acquisition the acquiring person's holdings fall short of the threshold levels of subsection (a)(3).

Example: If corporation A acquires 14.99 percent of the outstanding voting securities of corporation B at a cost of $12-million, and the requirements of subsections (a)(1) and (a)(2) are otherwise satisfied, the section is inapplicable. But if A's subsequent acquisition of one additional share of B, at a cost of $100, would increase A's holdings of B shares to 15.00 percent of the outstanding shares of B, then A may not acquire the one share without observing the requirements of the section.

§ 801.50 Acquisitions subsequent to exceeding threshold.

Since subsection (a)(3)(A) includes acquisitions as a result of which the acquiring person would hold 15 percent or more of the outstanding voting securities or assets of the acquired person, and since subsection (a)(3)(B) includes acquisitions as a result of which the acquiring person would hold voting securities or assets of the acquired person in excess of $15-million, acquisitions as a result of which the acquiring person's holdings meet these criteria, and which are not otherwise exempted by subsection (c) or these rules, are subject to the requirements of the section. This is true even though:

(a) Earlier acquisitions of identical assets or securities may have been subject to the requirements of the section;

(b) The acquiring person's holdings initially may have passed the threshold levels of subsection (a)(3) before the effective date of the section; or

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(c) The acquiring person's holdings may have initially passed the threshold levels of subsection (a)(3) by increases in market values or other events other than acquisitions.

Acquisitions will not be subject to the requirements of the section, even though meeting the criteria of subsection (a)(3), if they qualify for one of the exemptions in subsection (c) or these rules.

Example: In the example of § 801.45 all purchases of B's shares by A subsequent to the purchase of the one share also would be subject to the requirements of the section, unless A had disposed of some of its holdings so that the criteria of subsection (a)(3) were not satisfied, or unless the subsequent transactions qualified for one of the exemptions in subsection (c) or these rules.

§ 801.55 Joint ventures.

Joint ventures which are transactions of acquisition are subject to the requirements of this section if the statutory criteria are met. Joint ventures shall be evaluated for the purposes of this section as follows:

(a) Persons contributing to the formation of a joint venture shall be deemed acquiring persons. All such persons meeting the statutory criteria are subject to the requirements of the section.

Example: Corporation A, engaged in commerce and possessing net assets over $100-million, contributes assets of $6-million for a one-half interest in a joint venture, firm V. Firm V is intended to have assets exceeding $10-million within one year. Corporation A may not acquire its 50% of the shares of V without filing notification and otherwise complying with this section, unless the joint venture is exempted from the requirements of this section under rule 802.30.

(b) The joint venture to be created shall be deemed the acquired person for purposes of subsection (a). Pursuant to subsection (d)(2)(B), such persons otherwise meeting the criteria of this section need not file the notification required by this section.

Example: Corporation A and other joint venturers intend to contribute to joint venture V total assets of $8-million within one year. The criteria of subsection (a) are not met, and the requirements of the section are not applicable.

(c) The joint venture shall be deemed to be engaged in commerce or an activity affecting commerce if it is the intention of the persons contributing to its formation that it shall be so engaged thereafter within one year following consummation of the proposed transaction.

(d) The assets of the joint venture shall include all assets intended to be contributed to the acquired person by the acquiring persons within one year following consummation of the proposed transaction.

§ 801.60 Target of tender offer must report.

In the case of tender offers, a person whose voting securities are sought to be acquired by a person subject to the requirements of this section must file the notification required by this section, in accordance with these rules, no later than 5 p.m. Eastern Time on the fifteenth (or, in the case of cash tender offers, the tenth) calendar day following the date of receipt by the Federal Trade Commission and Assistant Attorney General, as defined by § 803.15(a), of the notification filed by the acquiring person. Should the fifteenth (or, in the case of cash tender offers, the tenth) calendar day fall on a weekend day or holiday, the notification shall be filed no later than 10 a.m. Eastern Time on the next following business day.

PART 802—EXEMPTION RULES

Sec.
802.05 Clearance by FTC or Antitrust Division.
802.10 Brokers and dealers in securities.
802.15 Acquisitions in escrow.
802.20 Repurchase of own voting securities.
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§ 802.05 Clearance by FTC or Antitrust Division.

Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition shall be exempt from the requirements of this section if:

(a) The voting securities or assets are to be acquired from a person ordered to divest such voting securities or assets by order of the Federal Trade Commission or of any federal court;

(b) The acquiring person is subject to an order of the Federal Trade Commission or of any federal court requiring prior approval by the Federal Trade Commission, the court, or the Department of Justice, of acquisitions, and such approval has been obtained;

(c) The acquiring person has obtained a favorable Advisory Opinion with respect to the acquisition from the Federal Trade Commission, 16 CFR 1.1; or

(d) The acquiring person has obtained a favorable opinion with respect to the acquisition under the Business Review Procedure of the Department of Justice's Antitrust Division, 28 CFR 50.6.

§ 802.10 Brokers and dealers in securities.

(a) *Acquisitions for own account.* Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition of voting securities by a broker or dealer in securities for its own account, or in the process of underwriting, shall be exempt from the requirements of this section; *Provided however,* That no acquisition by such broker or dealer of voting securities of another broker or dealer in securities, for its own account, shall be exempt under this paragraph.

(b) *Acquisition not for own account.* An acquisition of voting securities by a broker or dealer in securities, to be held for the account or benefit of another person, shall be deemed an acquisition by such other person. Pursuant to subsections (c)(12) and (d)(2)(B), such broker or dealer shall be exempt from the requirements of this section as to such acquisition. Nothing in this paragraph shall exempt the person for whose benefit the acquisition is made from any requirement under this section, with respect to any acquisition attributed to such person by this section and this paragraph.

§ 802.15 Acquisitions in escrow.

Pursuant to subsections (c)(12) and (d)(2)(B):

(a) An acquisition in escrow shall be exempt from the requirements of this section. Except as provided in paragraph (b) of this section, nothing in this paragraph shall exempt any person who under the escrow agreement may acquire the voting securities or assets from the escrowee, from any requirement under this section, with respect to any such acquisition.

(b) If the same voting securities or assets revert from the escrowee to the original owner, such acquisition shall be exempt from the requirements of this section.

§ 802.20 Repurchase of own voting securities.

Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition by a corporation of its own voting securities shall be exempt from the requirements of this section.

§ 802.25 Intra-enterprise transactions.

Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition to which but one person is party shall be exempt from the requirements of this section.

Examples:

(1) Corporation A transfers some of its assets to its wholly-owned subsidiary corporation S, in return for additional voting securities of S. The acquisitions are exempt from the requirements of this section.

(2) Corporation A creates a new subsidiary, corporation S, and intends to transfer assets to S in return for 100 percent of the voting securities of S (less any directors' qualifying shares). Since corporation A controls the nascent corporation S, only one "person" as defined in § 801.05 will be party to the transaction. The acquisitions are exempt from the requirements of this section.

(3) Corporations S1 and S2, both wholly-owned subsidiaries of corporation A, merge. Since both S1 and S2 are controlled by the same person, only one "person" as defined in § 801.05 is party to the transaction, which is exempt from the requirements of this section.

§ 802.30 Joint ventures excluded.

Pursuant to subsections (c)(12) and (d)(2)(B), a joint venture shall be exempt from the requirements of this section unless:

(a) At least one acquiring person possesses net sales or total assets of $100-million or more; and

(b) At least one other acquiring person possesses net sales or total assets of $10-million or more.

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§ 802.35 Insufficient involvement in United States Commerce.

Pursuant to subsections (c) (12) and (d) (2) (B), an acquisition of securities of an issuer, not substantially involved in the domestic, import or export commerce of the United States, or of assets to which no such substantial involvement of any person is attributable, shall be exempt from the requirements of this section. For purposes of this rule, such substantial involvement means sales in, imports to or exports from the United States in excess of an aggregate annual average of $10-million over the past three years, or the possession of assets (other than deposits in financial institutions, and instruments evidencing government obligations) in the United States the value of which exceeds $10-million.

Examples:

(1) A foreign subsidiary of a United States corporation seeks to acquire all of the stock of an issuer which is a subsidiary of a major foreign conglomerate. Unless the average annual aggregate sales in, imports to, or exports from the United States of the issuer whose stock is to be acquired exceeds $10-million, or unless the issuer holds assets in the United States of a value exceeding $10-million, the transaction is exempt from this section.

(2) A foreign subsidiary of a United States corporation decides to dispose of manufacturing plants located in a foreign country. Products produced at these plants are sold exclusively in the foreign country, and raw materials consumed by these plants which are exported from the United States do not exceed $10-million in value annually. Acquisition of these plants by any person is exempt from this section.

(3) A United States corporation possesses substantial productive capacity overseas and sells all its output overseas. Its assets in, average annual volume of imports to and exports from, the United States, do not exceed $10-million. The acquisition of this corporation by any (United States or foreign) corporation is exempt from this section.

§ 802.40 Minimum Dollar Value.

Pursuant to subsections (c) (12) and (d) (2) (B), an acquisition which would be subject to the requirements of this section because it satisfies subsection (a) (3) (A), and which does not satisfy subsection (a) (3) (B), shall be exempt from the requirements of this section if as a result of the acquisition the acquiring person would not hold:

(a) Assets of the acquired person valued at more than $10-million; or

(b) Voting securities of the issuer valued at more than $10-million, or any lesser amount which confers control of the issuer.

Example: Corporation A is acquiring a non-controlling 16 percent of the voting securities of corporation B for $7-million; the acquisition meets the criteria of subsection (a) (3) (A) but not of subsection (a) (3) (B). Despite the fact that after the acquisition A would hold 15 percent or more of B's voting securities or assets, the acquisition need not be reported since neither of the two criteria set out in this rule is exceeded. Note that this exemption is not applicable to acquisitions which also satisfy subsection (a) (3) (B). Assuming no other exemptions are applicable, if A acquires $9-million of B's voting securities and had within the preceding 180 calendar days acquired assets of B for $7-million, A would hold in excess of $15-million of B's aggregate voting securities and assets, and A must comply with the requirements of this section.

Example: Corporation A owns a non-controlling 16 per cent of the stock of corporation B on the effective date of the statute, and is otherwise subject to the requirements of this section. Before it acquires any more stock in corporation B, corporation A must observe the notification and waiting-period requirements of the section. After reporting, A may further acquire up to five per cent of the stock of B and need not observe the notification and waiting-period requirements of the section, so long as such further acquisitions would not give it control of B.

§ 802.45 Inconsequential incremental acquisitions.

(a) Pursuant to subsections (c) (12) and (d) (2) (B), an acquisition of voting securities, not falling within paragraph (b) of this rule, shall be exempt from the requirements of this section if:

(1) The acquiring person previously acquired voting securities of the same class of the same issuer;

(2) The acquiring person filed the Notification and Report Form required by this section and § 803.05 with respect to the earlier acquisition; and

(3) As a result of the acquisition, the holdings of the acquiring person would not increase by more than five percent of the total outstanding voting securities of the issuer the holdings of the acquiring person as a result of the acquisition which was the subject of the earlier notification.

(b) Notwithstanding paragraph (a) of this section, no acquisition otherwise subject to the requirements of this section shall be exempt from the requirements of this section if the acquisition would confer control upon the acquiring person.

§ 802.50 Short report after prior report.

(a) The Notification and Report Form required by this section and § 803.05 need not be completed by the acquiring person or the acquired person if:

(1) The acquiring person previously acquired assets or voting securities of the acquired person;

(2) In connection with such previous acquisition, both the acquiring person and the acquired person filed the Notification and Report Form required by this section and § 803.05;

(3) Both persons file statements, certified by their submission together with the completed certification page from the Notification and Report required by this section and § 803.05, and otherwise filed in accordance with these rules, describing the proposed transaction and providing a response to every item on the Notification and Report Form to which the response materially differs from the earlier response;

(4) Such statements are filed within one year of the date of filing of the earlier Notification and Report Form; and

(5) The acquisition is consummated within 180 calendar days of the date of receipt of such statements, as defined in § 803.10.

(b) Nothing in this rule shall exempt any person from any requirement under this section. Sufficient statements filed in accordance with paragraph (a) of this section shall constitute notification under this section.

§ 802.75 Federal Agency approval.

For the purposes of subsections (c) (6) and (c) (8), the term "information and documentary material" includes 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, 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 upon request by the Federal Trade Commission or Assistant Attorney General, or a delegated official thereof.

§ 802.85 Acquisitions for investment purposes.

(a) Acquiring persons making an acquisition which is exempt from the requirements of this section only under subsection (c) (9), other than persons excepted by paragraph (b) of this rule, must submit to the Federal Trade Commission and Assistant Attorney General, contemporaneously with the transaction, a statement containing the following information:

(1) The identity of the acquiring person;

(2) The identity of the issuer whose voting securities are to be acquired;

(3) The percentage of the outstanding voting securities of the issuer held by the acquiring person before and after the acquisition;

(4) A declaration that the voting securities are to be held solely for investment purposes.

The statement is to be certified by its submission together with the completed certification page from the Notification and Report Form required by this section and § 803.05.

(b) The statement required by paragraph (a) of this section need not be filed by any bank, banking association, trust company, investment company, or insurance company.

(c) No acquisition of voting securities shall be exempt under subsection (c) (9) as "solely for investment purposes" if, as a result of the acquisition, the acquiring person would control the issuer.

§ 802.90 Stock splits and dividends.

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

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§ 802.95 Certain bank, investment or insurance company acquisitions. [Reserved]

PART 803—TRANSMITTAL RULES

Sec.
803.05 Notification and report form.
803.10 Running of time.
803.15 Affidavits required.
803.20 Certification.
803.25 Incomplete responses.
803.30 Requests for additional information.
803.35 Termination of waiting period.

§ 803.05 Notification and report form.

Except as otherwise provided under § 802.50 of this chapter, the notification required by this section shall be the Notification and Report Form promulgated by the Federal Trade Commission, as amended from time to time. All persons required to file notification by this section and these rules shall do so by completing and filing the Notification and Report Form, or a photostatic or other equivalent reproduction thereof, in accordance with the instructions thereon and these rules, except as otherwise provided under § 802.50. Copies of the Notification and Report Form may be obtained from the Public Reference Branch, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C., or by writing to the Premerger Notification Office, Room 301, Federal Trade Commission, Washington, D.C. 20580.

§ 803.10 Running of time.

(a) *Beginning of waiting period.* (1) The waiting period required by this section shall begin on the date of receipt by both designated offices (Premerger Notification Office, Room 301, Federal Trade Commission, Washington, D.C. 20580, and Director of Operations, Antitrust Division, Department of Justice, Washington, D.C. 20530) of the notification required by this section, as provided in these rules, from:

(i) In the case of tender offers, the acquiring person;

(ii) In the case of acquisitions other than tender offers, from all persons required by this section and these rules to file notification.

If the notifications are not delivered to the two offices on the same date, the date of receipt shall be the latest of the dates of delivery. Delivery should be effected directly to the designated offices, either by hand or by certified or registered mail.

(2) Any additional waiting period, pursuant to subsection (e) and § 803.30 (b) (2), shall begin on the date of receipt by the Federal Trade Commission or Assistant Attorney General, whichever requested additional information or documentary material, at the office designated in subparagraph (1) of this paragraph, of the additional information or documentary material requested.

(b) *Expiration of waiting period.* (1) Pursuant to subsection (b) (1) (B), the waiting period shall expire at 5:00 p.m. Eastern Time on the thirtieth (or, in the case of a cash tender offer, the fifteenth) calendar day after the date of receipt as defined in this rule, unless extended pursuant to subsection (e) and § 803.30, or subsection (g) (2), or terminated pursuant to subsection (b) (2) and § 803.35.

(2) Any additional waiting period, pursuant to subsection (e) (2) and § 803.30, shall expire at 5:00 p.m. Eastern Time on the twentieth (or, in the case of a cash tender offer, the tenth) calendar day after the date of receipt of the additional information or documentary material, unless extended pursuant to subsection (g) (2), or terminated pursuant to subsection (e) and § 803.35.

§ 803.15 Affidavits required.

(a) *Tender offers.* The notification required by this section must contain an affidavit, attached to the front of the notification, attesting that:

(1) The tender offer has been published, sent, or given to security holders of the issuer whose voting securities are sought to be acquired; and

(2) The issuer whose voting securities are sought to be acquired has been informed, or is being contemporaneously informed, at its principal executive offices, of the filing and the date of receipt, as defined in § 803.10, of the Notification and Report Form by the Federal Trade Commission and Assistant Attorney General.

(b) *Acquisitions, mergers, and joint ventures other than tender offers.* The notification required by this section must contain an affidavit, attached to the front of the notification, attesting that a contract, or an agreement in principle, to merge or acquire has been executed.

§ 803.20 Certification.

The notification required by this section must be certified by an officer of the person filing notification, or, in the case of a person lacking officers, an individual exercising similar functions. In either case, the certifying individual must possess actual authority to make the certification on behalf of the person filing notification.

§ 803.25 Incomplete responses.

(a) *Omission of redundant responses.* For acquisitions other than tender offers, a person filing the Notification and Report Form need not respond to any item on the Form which would call for a response identical to a response provided by another person required to file and filing the Form with respect to the same acquisition. For each such omitted response, the person must indicate which such Form, and which response, provides the requested information.

(b) *Statement of reasons for noncompliance.* In each instance, other than pursuant to paragraph (a) of this section, in which less than a complete response has been supplied on the Notification and Report Form, or other notification under § 802.50 of this chapter, the person filing notification must indicate the following:

(1) Why a complete response has not been given;

(2) What information would have been required for a complete response;

(3) Who, if anyone, has the required information;

(4) What additional work would be required to furnish a complete response;

(5) Whether a complete response is being prepared, and if so, when it will be supplied.

§ 803.30 Requests for additional information or documentary material.

(a) *When request effective.* A request for additional information or documentary material, pursuant to subsection (e) (1), shall be made by a delegated official of the Federal Trade Commission or Assistant Attorney General, and shall be effective:

(1) Upon receipt of a written request by the person to which the request is directed within the thirty-day (or, in the case of cash tender offers, fifteen day) waiting period; or

(2) When communicated by telephone or in person, and a written request is mailed, within the thirty-day (or, in the case of cash tender offers, fifteen-day) waiting period. The person filing notification shall be obliged to keep a suitably delegated individual reasonably available throughout the waiting period through the telephone number supplied on the certification page of the Notification and Report Form. A request for additional information or documentary material, or for clarification, need only be communicated by telephone to that individual.

The additional information or documentary material requested should be supplied to either the Federal Trade Commission or Assistant Attorney General, whichever requested the information, and to both.

(b) *Waiting period extended.* (1) During the time period when a request for additional information or documentary materail remains outstanding, the waiting period shall remain in effect, even though the original thirty days (or, in the case of cash tender offers, fifteen days) have elapsed from the date of receipt of the original notification.

(2) A request for additional information or documentary material shall in every instance act to extend the waiting period for an additional period of twenty (or, in the case of cash tender offers, ten) days from the date of receipt of the response to such a request, pursuant to subsection (e) (2), except that such waiting period may be terminated by either the Federal Trade Commission and Assistant Attorney General, whichever requested the information, or a delegated official thereof, at its discretion, in the manner prescribed by § 803.35.

(c) *Request for clarification.* No request for clarification or amplification of any response to any item on the Notification and Report Form, whether communication in writing, in person, or by telephone, shall be considered a request for additional information or documentary material with the meaning of subsection (e), unless specifically so identified and transmitted in accordance with paragraph (a) of this section.

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§ 803.35 Termination of waiting period.

(a) The waiting period required by this section, and any extension thereof pursuant to subsection (e) and rule 803.30, shall not be terminated before its expiration date pursuant to subsection (b)(2), unless at least one person required to file notification under this section submits the following documents to both designated offices listed in § 803.10(a), or, in the case of an extension of the waiting period pursuant to subsection (e) and § 803.30, only to the designated office of the Federal Trade Commission or Assistant Attorney General, which ever requested additional information or documentary material:

(1) A written request for termination of the waiting period, signed by an individual suitably authorized to do so by the requesting person; and

(2) An affidavit, attesting that copies of the request have been or are being contemporaneously served upon all other persons required to file notification under this section, including, in the case of tender offers, the issuer whose voting securities are sought to be acquired, and in addition, in the case of joint ventures, all other acquiring persons, whether or not filing notification. The request shall be served upon such persons at their principal executive offices, and the affidavit shall list all such persons and the address at which each was served.

A request for termination of the waiting period and its accompanying affidavit may be filed with the notification or at any time during the waiting period.

(b) In any case in which the Federal Trade Commission and Assistant Attorney General terminate the waiting period before its expiration date, the Federal Trade Commission and Assistant Attorney General, or a delegated official thereof, in addition to publishing a notice in the FEDERAL REGISTER in accordance with subsection (B)(2), shall notify in writing each person listed in the affidavit required by paragraph (a)(2) of this section, at the address listed in the affidavit, of the termination of the waiting period.

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM
RELATING TO MERGERS OR ACQUISITIONS

THIS REPORT IS REQUIRED BY LAW and must be filed separately by the acquiring and acquired companies. It is mandatory under the authority of Section 201 of P.L. 94-435, 15 U.S.C. §18A. The statute and relevant rules and definitions are set forth in the Federal Register at page _____. Complete and return two notarized copies (with one set of attachments) of this Notification and Report Form to Pre-merger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C 20580, and three notarized copies (with one set of attachments) to Director of Operations, Antitrust Division, Department of Justice, Washington, D.C. 20530. The central office for information and assistance with respect to matters in connection with this Notification and Report Form is Room 301, Federal Trade Commission, Washington, D.C. 20580, phone (202) _____.

Failure to file this Notification and Report Form in accordance with the applicable provisions of P.L. 94-435 and the relevant rules subjects the company and those individuals responsible for non-compliance to liability for a penalty of not more than $10,000 for each day during which such company is in violation of Sec. 201, P.L. 94-435, 15 U.S.C. §18A.

DEFINITIONS

"Company," as used herein, means the pre-transaction "person" as defined in the relevant rules.

"Dollar Revenues," as used herein, means value of shipments for manufacturing companies and sales, receipts, revenues or other appropriate dollar value measure for non-manufacturing companies, f.o.b. the plant or establishment less returns, after discounts and allowances and excluding freight charges and excise taxes. Dollar revenues including delivery may be reported if delivery is an integral part of the sales price as in such products as milk and bakery products. Dollar revenues include interplant transfers. Finance companies (2-Digit SIC Codes 61; 62 and 67) and Real Estate Companies (2-Digit SIC Code 65) in response to item 5(a) are to identify or explain the dollar revenues reported.

Additional definitions are set forth as part of the relevant rules.

CASH TENDER OFFERS

If this transaction is a cash tender offer, check: [ ]

SPECIAL INSTRUCTION FOR CERTAIN PARTIAL ACQUISITIONS

For certain partial acquisitions, more limited reporting requirements may be appropriate. Although the "persons" subject to this section and required to furnish this report are broadly defined by the relevant rules, it is the intention of the Federal Trade Commission and the Assistant Attorney General to require the reporting of only such information as may be relevant to assessment of the competitive consequences of the reported transaction. Thus, in responding to items 1(b), 2(h), 3 through 8, and the Appendix herein, the Notification and Report Forms must provide information on the total operations of the acquiring person but may be limited, when the acquisition is for cash or consideration other than securities, to information relevant to those assets actually being transferred, or to the operation of the issuer whose voting securities are actually being transferred. In those instances in which a partial acquisition of assets is to be made but it is necessary to report information relevant to all of the assets of the acquired company, information must be provided separately in response to items 5 and 6 as to both the particular assets to be acquired and the entire acquired company.

Examples for Special Instruction

For example: (1) A subsidiary of company A acquires, for cash, assets of Company B. Company A is the acquiring person, and any required notification must provide information on A's entire operation. Company B is the acquired person, but any required notification may be limited to information relevant to those assets of B actually being transferred.

(2) Company A acquires, for cash, all of the voting securities of Company S, a wholly-owned subsidiary of Company B. Company A is the acquiring company, and any required notification must provide information on A's entire operation. Company B is the acquired person, but any required notification may be limited to information relevant to Company S and S's subsidiaries. (Note also that Company S is an "acquired person" for purposes of calculating the percentage of voting securities acquired. See rule 801.30.)

(3) Company A acquires assets of Company B, which receives in return voting securities of Company A. Any required notification must provide information on the entire operation of both Company A and Company B. The notification must contain separate information in response to items 5 and 6 as to both the particular assets to be acquired and the entire companies involved.

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INSTRUCTIONS

Each answer should identify the item to which it is addressed. Attach additional sheets as necessary in answering the item. Additional sheets should identify the item to which they are addressed. If you are unable to answer any item fully, give such information as is available to you and explain why your answer is incomplete, as provided by rule 803.25(b). If books and records which provide accurate answers are not available, enter your best estimates and indicate the sources or bases of your estimates. Estimated data should be followed by the notation "est."

Except where stated otherwise, all inquiries refer to the operations conducted within the United States (including the District of Columbia, commonwealths and territories) by the company. All references to "year" refer to calendar year. If the data is not available on a calendar year basis, supply the requested data for the company's fiscal year reporting period which most nearly corresponds to the calendar year specified. In addition specify the months of the fiscal year of the company: _____(month) to _____(month).

Companies engaged in insurance activities need not supply information with respect to item 5, but must provide the information described in the Appendix to this Notification and Report Form.

This Notification and Report Form requests information essentially at two levels--at the 4-digit (SIC code) industry level, and at the 7-digit (SIC-based code) product level.

In reporting by "4-digit (SIC code) industry," you should refer to the 1972 Edition of the Standard Industrial Classification Manual (Appendix B) as published by the Executive Office of the President - Office of Management and Budget.

In reporting information by "7-digit (SIC -based code) product", you should refer to one or more of the following reference publications published by the U.S. Bureau of the Census: (a) Numerical List of Manufactured Products, 1972 Census of Manufactures (MC72-1.2) (New 1972 SIC Basis), (b) Volume II, "Industry Statistics," 1972 Census of Manufactures, (c) Applicable "Product Reference Lists" appearing in the Instruction Manual of the various Current Industrial Reports surveys (monthly, quarterly, or annual) conducted by the U.S. Bureau of Census.

Do not use the 6-digit SIC codes that appear on the MA-100 census form.

All financial information should be rounded to the nearest thousand dollars.

Items denoted with an asterisk (*) need not be answered by a company if it certifies, in response to the item, that the required information has been or will be supplied by another company required to file notification with respect to the transaction. This instruction shall not apply to the acquiring company in a tender offer situation. See rule 803.25 of the relevant rules.

If the transaction being reported is a merger, consolidation, or other similar combination, references to "acquiring company" and "acquired company" in this Form shall be considered references to the several parties to the transactions.

1. (a) Reporting Company

(1) Check if:

acquiring company ☐

acquired company ☐

Name: _____

Mailing Address: _____
(Headquarters Office)

(2) Nature of reporting company:

Check if: Corporation ☐ Partnership ☐ Other ☐ Specify _____

(3) If Corporation:

State of incorporation _____

Date of incorporation _____

(4) If partnership or other: Jurisdiction under which formed: _____

Date of formation: _____

(b) Active entities included within the reporting company (See the Special Instruction for Certain Partial Acquisitions.)

	Name	Date and State of Incorporation	Mailing Address	(if applicable)
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				

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2. Information on the transaction:

(a) List the name(s) and mailing address(es) of the other company (or companies) involved in the transaction.

Name_____

Mailing Address_____
Headquarters Office

_____

Identify with an asterisk each company that is required to file a Notification and Report Form.

2. (b)* State the scheduled consummation date of the transaction.

(c)* Describe the manner in which the transaction is to be carried out, including each necessary step and its scheduled date.

(d)* Describe all securities or assets to be transferred in the transaction and the consideration, with approximate dollar value thereof, to be received by each party.

2.(e)* To the extent that the transaction involves the transfer of assets other than securities, furnish the following information:

(1)	(2)	(3)	(4)	(5)	(6)
DESCRIPTION OF ASSETS TO BE TRANSFERRED	VALUE OF THE ASSETS	METHOD OF VALUATION	DATE OF VALUATION	DOLLAR SALES OR REVENUES ATTRIBUTABLE TO THE ASSETS IN THE MOST RECENT YEAR	TIME PERIOD COVERED FOR SALES OR REVENUES

2.(f)* To the extent that the transaction involves the transfer of securities, furnish the following information:

(1)	(2)	(3)	(4)	(5)	(6)	(7)
CLASS OF SECURITIES TO BE TRANSFERRED	TOTAL NUMBER OF SHARES OF CLASS OUT-STANDING	MARK "X" IF CLASS IS VOTING SECURITY	NUMBER OF SHARES OF CLASS TO BE ACQUIRED	TOTAL NUMBER OF SHARES OF CLASS TO BE HELD BY ACQUIRING COMPANY AFTER CON-SUMMATION OF TRANS-ACTION	RATIO OF COLUMN (4) TO COLUMN (2), EXPRESSED AS PER-CENTAGE	RATIO OF COLUMN (5) TO COLUMN (2), EXPRESSED AS PERCENTAGE

2.(g)* Furnish copies of all contracts, options and agreements relating to the proposed transaction.

(h) Furnish copies of studies, surveys, analyses, and/or reports prepared by or for the company in the three years prior to the filing of this report, which discuss the reasons for or analyze the proposed transaction, or contain information regarding market shares, competition, competitors, markets, potential for sales growth or the expansion into geographic and/or product areas in relation to any product or service currently manufactured or sold by the other reporting company. (See the Special Instruction for Certain Partial Acquisitions.)

3.(a) (i) State the percentage of all voting securities of the acquired company to be held by the acquiring company as a result of the transaction:

(ii) State the percentage of all assets of the acquired company to be held by the acquiring company as a result of the transaction:

(b) State the value of the aggregate total amount of the voting securities and assets of the acquired company to be held by the acquiring company as a result of the transaction:

4.(a) Furnish copies of the most recent annual report, proxy statement, 10K report, and registration statement filed with the S.E.C. or any other security offering statement and stock listing statement issued by the company. If the company issued no annual reports, provide the latest annual balance sheets and profit and loss statements.

(b) Furnish copies of all such documents issued during the three years prior to the filing of this report which contain information directly pertaining to the reported transaction.

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5.(a) For 1972 and for the most recent year for each 4-digit (SIC code) industry in which the company was engaged, provide the following information on the company's operations in the United States: (See the Special Instruction for Certain Partial Acquisitions.)

(1) 4-DIGIT (SIC CODE) INDUSTRY		(2) TOTAL DOLLAR REVENUES	
(1a) CODE	(1b) DESCRIPTION	(2a) 1972	(2b) MOST RECENT YEAR (19)

5.(b) For 1972 and for the most recent year for each 7-digit (SIC-based code) product of the company, provide the following information on the company's operations in the United States: (See the Special Instruction for Certain Partial Acquisitions.)

(1) 7-DIGIT (SIC-BASED CODE)		(2) TOTAL DOLLAR REVENUES		(3) PERCENT OF REVENUES DERIVED FROM EXPORTS	
(1a) PRODUCT	(1b) DESCRIPTION	(2a) 1972	(2b) MOST RECENT YEAR (19)	(3a) 1972	(3b) MOST RECENT YEAR (19)

5.(c) For 1972 and for the most recent year for each 7-digit (SIC-based code) product which is imported into the United States and resold as such by the company, provide the following information: (See the Special Instruction for Certain Partial Acquisitions.)

(1) EQUIVALENT 7-DIGIT (SIC-BASED CODE)		(2) DOLLAR VALUE OF IMPORTS AT PORT OF ENTRY	
(1a) PRODUCT	(1b) DESCRIPTION	(2a) (1972)	(2b) MOST RECENT YEAR (19)

6.(a) Did two or more of the parties to the transaction derive sales or revenues from operations in, imports to or exports from the United States in the same 4-digit (SIC code) industry in the most recent year? yes___;no___.

6.(b) If the transaction is a joint venture, did two or more of the acquiring companies derive sales or revenues from operations in, imports to or exports from the United States in the same 4-digit (SIC Code) industry in the most recent year? yes ____; no ____.

If the answer to either 6(a) or 6(b) is "yes", items 6(c), 6(d), 6(e) and 7 must be answered. If the "yes" answer to 6(a) or 6(b) involves more than two companies, respond to items 6(c), 6(d), 6(e) and 7 with regard to each appropriate two-party combination. (See the Special Instruction for Certain Partial Acquisitions.)

6.(c)* Identify each 4-digit (SIC Code) industry in which both the acquiring company and the acquired company derived sales or revenues in the most recent year from operations in, imports to or exports from the United States (identify year: 19). For manufacturing industries, list all States to which shipments were made. For non-manufacturing industries, list all States where sales were made or revenues were derived. (See the Special Instruction for Certain Partial Acquisitions.)

(1) 4-DIGIT INDUSTRY	(2) INDUSTRY DESCRIPTION	(3) STATES TO WHICH SHIPMENTS WERE MADE OR FROM WHICH REVENUES WERE DERIVED	
		(3a) ACQUIRING COMPANY (LIST STATES)	(3b) ACQUIRED COMPANY (LIST STATES)
(1)			
(2)			
(3)			
(4)			

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6.(d)* For products in the manufacturing industries (SIC 20-39), list the 7-digit (SIC-based code) products, if any, in which both the acquiring company and the acquired company derived sales or revenues in the most recent year from operations in, imports to or exports from the United States (identify year: 19). List all States to which shipments were made. (See the Special Instruction for Certain Partial Acquisitions.)

	(1)	(2)	(3) STATES TO WHICH SHIPMENTS WERE MADE	
			(3a)	(3b)
	7-DIGIT PRODUCT	PRODUCT DESCRIPTION	ACQUIRING COMPANY (LIST STATES)	ACQUIRED COMPANY (LIST STATES)
(1)				
(2)				
(3)				
(4)				

6.(e) List the ten (10) industries or products (4-digit (SIC code) industries within SIC 10-14 and 7-digit (SIC-based code) products between SIC 2000 and SIC 3999) identified in items 6(c) and 6(d), in which the company had the largest sales or generated the largest revenues in the most recent year. For each such industry or product, name the five (5) most significant competitors of the company.

(1) TEN LARGEST OF THE 4-DIGIT (SIC CODE) INDUSTRIES WITHIN SIC 10-14 AND 7-DIGIT (SIC-BASED CODE) PRODUCT BETWEEN SIC 2000 AND SIC 3999	(2) FIVE MOST SIGNIFICANT COMPETITORS FOR EACH INDUSTRY OR PRODUCT IDENTIFIED In COLUMN(1)				
1.	1.	2.	3.	4.	5.
2.	1.	2.	3.	4.	5.
3.	1.	2.	3.	4.	5.
4.	1.	2.	3.	4.	5.
5.	1.	2.	3.	4.	5.
6.	1.	2.	3.	4.	5.
7.	1.	2.	3.	4.	5.
8.	1.	2.	3.	4.	5.
9.	1.	2.	3.	4.	5.
10.	1.	2.	3.	4.	5.

7. List the domestic and foreign mergers and acquisitions made by the company in the ten years prior to the filing of this report of companies engaged at the time of acquisition in any 4-digit (SIC code) industry in which both the acquired and acquiring companies in this transaction are currently engaged. Report only those mergers or acquisitions of more than 50 percent of the voting securities or assets of a company with sales or assets greater than $10-million. (See the Special Instruction for Certain Partial Acquisitions.)

	(1) COMPANY NAME	(2) ADDRESS OF HEADQUARTERS PRIOR TO ACQUISITION	(3) INDICATE WHETHER SECURITIES OR ASSETS WERE ACQUIRED	(4) CONSUMMATION DATE	(5) TOTAL COMPANY SALES OR REVENUES FOR YEAR PRIOR TO ACQUISITION	(6) TOTAL ASSETS FOR YEAR PRIOR TO ACQUISITION	(7) 4-DIGIT INDUSTRIES IN WHICH COMPANY ENGAGED
(1)							
(2)							
(3)							
(4)							
(5)							

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8.(a) Identify each product or service, by its 7-digit (SIC-based code) for manufacturing industries or 4-digit (SIC code) industry for non-manufacturing industries, and the product or industry description, which was manufactured or sold by the acquired company and which was used or consumed in manufacturing or resold in any form by the acquiring company, and which the acquiring company purchased in the amount of one million dollars or more in the most recent year. In the alternative, if determination of the threshold amount is unduly burdensome, each product or service may be reported. (See the Special Instruction for Certain Partial Acquisitions.)

	(1) 4-DIGIT OR 7-DIGIT CODE	(2) INDUSTRY OR PRODUCT DESCRIPTION	(3) DID THE ACQUIRING COMPANY PURCHASE THE PRODUCT OR SERVICE FROM THE ACQUIRED COMPANY DURING THE MOST RECENT YEAR? "YES" OR "NO"
(1)			
(2)			
(3)			
(4)			

8 (b) Identify each product or service, by its 7-digit (SIC-based code) for manufacturing industries or 4-digit (SIC code) industry for non-manufacturing industries, and the product or industry description, which was manufactured or sold by the acquiring company and which was used or consumed in manufacturing or resold in any form by the acquired company, and which the acquired company purchased in the amount of one million dollars or more in the most recent year. In the alternative, if determination of the threshold amount is unduly burdensome, each product or service may be reported. (See the Special Instruction for Certain Partial Acquisitions.)

	(1) 4-DIGIT OR 7-DIGIT CODE	(2) INDUSTRY OR PRODUCT DESCRIPTION	(3) DID THE ACQUIRED COMPANY PURCHASE THE PRODUCT OR SERVICE FROM THE ACQUIRING COMPANY DURING THE MOST RECENT YEAR? "YES" OR "NO"
(1)			
(2)			
(3)			

CERTIFICATION

This notification was prepared under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that reasonable estimates have been made when company accounts do not provide the requested data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

_____
(TYPE OR PRINT NAME AND TITLE)

_____ _____
(Signature) (Date)

Subscribed and sworn to before me at the City of_____, State of_____

this_____day of_____, 19__, _____
(Notary Public)

My Commission Expires_____

Print or type the name, address, and telephone number of the person to contact regarding this notification.

_____
(Name)

_____
(Business Address)

_____
(Business Telephone Number)

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APPENDIX TO NOTIFICATION AND REPORT FORM: INSURANCE, FINANCE, AND REAL ESTATE

1. Insurance Companies:
This category includes carriers of all types of insurance, insurance agents, and brokers (2-digit SIC codes 63 and 64).

Life Insurance

A. Provide for the most recent year the amount of premium receipts (calculated on an accrual basis) for each of the following lines:
   1. Life Insurance:
      a. Ordinary life insurance;
      b. Group life insurance (including Federal Employees' Group Life Insurance and Servicemen's Group Life Insurance, but excluding credit life insurance);
      c. Industrial life insurance;
      d. Credit life insurance;
   2. Annuity Considerations:
      a. Individual annuity considerations;
      b. Group annuity considerations;
   3. Health Insurance:
      a. Individual health insurance;
      b. Group health insurance.

B. Provide for the most recent year the amount of new life insurance business issued in the United States during the calendar year (exclusive of revivals, increases, dividend additions and reinsurance ceded) for each of the following lines:
   1. Ordinary life insurance;
   2. Group Life insurance (including Federal Employees' Group Life Insurance and Servicemen's Group Life Insurance, but excluding credit life insurance);
   3. Industrial life insurance;
   4. Credit life insurance.

Property Liability Insurance

A. Provide for the most recent year the amount of direct premiums written during the calendar year in the United States each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your company's annual convention statement.

B. Provide for the most recent year the amount of net premiums written during the calendar year in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your company's annual convention statement.

Title Insurance

A. Provide for the most recent year the amount of net direct title insurance premiums written in the United States during the calendar year.

B. Provide for the most recent year the amount of direct title insurance premiums earned in the United States during the calendar year.

See the Special Instruction for Certain Partial Acquisitions.

The Federal Trade Commission and the Assistant Attorney General invite and encourage the filing of written comments upon the proposed notification form and relevant proposed rules in order to assure that the final forms thereof will satisfy the law enforcement concerns of the two agencies while, at the same time, not be unduly cumbersome or burdensome. Written comments on the proposal by any interested person should carry the subject, "Title II—Premerger Notification." Written comments should be submitted to (1) the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580, Room 172, and (2) Assistant Attorney General, Antitrust Division, Department of Justice, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530, Room 3224. All written comments received on or before January 19, 1977, will be considered. Comments and other written materials with respect to the proposed notification form and proposed rules will be available for examination by interested persons in Room 130 of the Public Reference Branch, Federal Trade Commission, Washington, D.C., and will be considered by the Federal Trade Commission and the Assistant Attorney General in their determination to issue a final version of the proposed notification form and proposed rules. All interested persons are urged to express their approval or disapproval of the proposed notification form and proposed rules, or to recommend revisions, and to give a full statement of their views.

Issued: December 15, 1976.

By the direction of the Commission.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc.76-37343 Filed 12-17-76;8:45 am]

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