Hi folks.

I have a question about the size of person test and would appreciate your guidance.

Company Y is acquiring certain voting shares of Company X and we are assessing whether the HSR size of person test would be satisfied. If Company X’s UPE has less than $16.9 million in total assets, the size of person test would not be satisfied because Company X (including its UPE) is not engaged in manufacturing and had less than $168.8 million in annual net sales in its most recent year.

Mr. A holds 49.5% of the voting shares of Company X under 16 C.F.R. Section 801.12 and also holds an irrevocable proxy to vote Mr. B’s shares of Company X. Because of the irrevocable proxy, Mr. A is the UPE of Company X because he has the power to vote over 50% of the Company’s voting shares for directors.

When Mr. A is assessing whether he has at least $16.9 million in total assets, may he disregard the value of his 49.5% interests in Company X (whether such interests are recorded on his regularly prepared balance sheet or whether he has to create a pro forma balance sheet) because he will have to include 100% of the assets of Company X with his other qualifying assets?
Thanks for your help.