(iii) At least one other acquiring person has annual net sales or total assets of $10 million (as adjusted) or more; or

(2) (i) The acquiring person has annual net sales or total assets of $10 million (as adjusted) or more;

(ii) The joint venture or other corporation will have total assets of $100 million (as adjusted) or more; and

(iii) At least one other acquiring person has annual net sales or total assets of $10 million (as adjusted) or more; and

For purposes of paragraphs (b) and (c) of this section and determining whether any exemptions provided by the act and these rules apply to its formation, the assets of the joint venture or other corporation shall include:

(1) All assets which any person contributing to the formation of the joint venture or other corporation has agreed to transfer or for which agreements have been secured for the joint venture or other corporation to obtain at any time, whether or not such person is subject to the requirements of the act; and

(2) Any amount of credit or any obligations of the joint venture or other corporation which any person contributing to the formation has agreed to extend or guarantee, at any time.

(e) The commerce criterion of Section 7A(a)(1) is satisfied if either the activities of any acquiring person are in or affect commerce, or the person filing notification should reasonably believe that the activities of the joint venture or other corporation will be in or will affect commerce.

Examples: 1. Persons “A,” “B,” and “C” agree to create a new corporation “N,” a joint venture. “A,” “B,” and “C” will each hold one-third of the shares of “N.” “A” has more than $100 million (as adjusted) in annual net sales. “B” has more than $10 million (as adjusted) in total assets but less than $100 million (as adjusted) in annual net sales. Both “C”s total assets and its annual net sales are less than $10 million (as adjusted). “A,” “B,” and “C” are each engaged in commerce. “A,” “B,” and “C” have agreed to make an aggregate initial contribution to the new entity of $18 million in assets and each to make additional contributions of $21 million in each of the next three years. Under paragraph (d) of this section, the assets of the new corporation are $207 million. Under paragraph (c) of this section, “A” and “B” must file notification. Note that “A” and “B” also meet the criterion of Section 7A(a)(2)x(B)(1) since they will be acquiring one-third of the voting securities of the new entity for in excess of $50 million (as adjusted). N need not file notification; see §802.41.

2. In the preceding example “A” has over $10 million (as adjusted) but less than $100 million (as adjusted) in sales and assets; “B” and “C” have less than $10 million (as adjusted) in sales and assets. “N” has total assets of $500 million. Assume that “A” will acquire 50 percent of the voting securities of “N” and “B” and “C” will each acquire 25 percent. Since “A” will acquire in excess of $200 million (as adjusted) in voting securities of “N”, the size-of-person test in §801.40(c) is inapplicable and “A” is required to file notification.


§801.50 Formation of unincorporated entities.

(a) In the formation of an unincorporated entity (other than in connection with a consolidation), even though the persons contributing to the formation of the unincorporated entity and the unincorporated entity itself may, in the formation transaction, be both acquiring and acquired persons within the meaning of §801.2, the contributors shall be deemed acquiring persons only and the unincorporated entity shall be deemed the acquired person only.

(b) Unless exempted by the Act or any of these rules, upon the formation of an unincorporated entity, in a transaction meeting the criteria of Section 7A(a)(1) and 7A(a)(2)(A) (other than in connection with a consolidation), a person is subject to the requirements of the Act if it acquires control of the newly-formed entity. Unless exempted by the Act or any of these rules, upon the formation of an unincorporated entity, in a transaction meeting the criteria of Section 7A(a)(1), the criteria of Section 7A(a)(2)(B)(1) (other than in connection with a consolidation), a person is subject to the requirements of the Act if:

(1) (i) The acquiring person has annual net sales or total assets of $100 million (as adjusted) or more;

(ii) The newly-formed entity has total assets of $10 million (as adjusted) or more; and

(iii) The acquiring person acquires control of the newly-formed entity; or
§ 801.90 Transactions or devices for avoidance.

Any transaction(s) or other device(s) entered into or employed for the purpose of avoiding the obligation to comply with the requirements of the act shall be disregarded, and the obligation to comply shall be determined by applying the act and these rules to the substance of the transaction.

Examples: 1. Suppose corporations A and B wish to form a joint venture. A and B contemplate a total investment of over $100 million (as adjusted) in the joint venture; persons “A” and “B” each have total assets in excess of $100 million (as adjusted). Instead of filing notification pursuant to § 801.40, A creates a new subsidiary, A1, which issues half of its authorized shares to A. Assume that A1 has total assets of $3000. “A” then sells 50 percent of its A1 stock to “B” for $1500. Thereafter, “A” and “B” each contribute in excess of $50 million (as adjusted) to A1 in exchange for the remaining authorized A1 stock (one-fourth each to “A” and “B”). A’s creation of A1 was exempt under Sec. 802.30; its $1500 sale of A1 stock to “B” did not meet the size-of-transaction filing threshold in Section 7A(a)(1). Instead of filing notification pursuant to § 801.40, A created a new subsidiary, A1, which issues half of its authorized shares to A. Assume that A has total assets of $3000. “A” then sells 50 percent of its A1 stock to “B” for $1500. Thereafter, “A” and “B” each contribute in excess of $50 million (as adjusted) to A1 in exchange for the remaining authorized A1 stock (one-fourth each to “A” and “B”). A’s creation of A1 was exempt under Sec. 802.30; its $1500 sale of A1 stock to “B” did not meet the size-of-transaction filing threshold in Section 7A(a)(1). Instead of filing notification pursuant to § 801.40, A created a new subsidiary, A1, which issues half of its authorized shares to A. Assume that A1 has total assets of $3000. “A” then sells 50 percent of its A1 stock to “B” for $1500. Thereafter, “A” and “B” each contribute in excess of $50 million (as adjusted) to A1 in exchange for the remaining authorized A1 stock (one-fourth each to “A” and “B”). A’s creation of A1 was exempt under Sec. 802.30; its $1500 sale of A1 stock to “B” did not meet the size-of-transaction filing threshold in Section 7A(a)(1). Instead of filing notification pursuant to § 801.40, A created a new subsidiary, A1, which issues half of its authorized shares to A. Assume that A1 has total assets of $3000. “A” then sells 50 percent of its A1 stock to “B” for $1500. Thereafter, “A” and “B” each contribute in excess of $50 million (as adjusted) to A1 in exchange for the remaining authorized A1 stock (one-fourth each to “A” and “B”). A’s creation of A1 was exempt under Sec. 802.30; its $1500 sale of A1 stock to “B” did not meet the size-of-transaction filing threshold in Section 7A(a)(1). Instead of filing notification pursuant to § 801.40, A created a new subsidiary, A1, which issues half of its authorized shares to A. Assume that A1 has total assets of $3000. “A” then sells 50 percent of its A1 stock to “B” for $1500. Thereafter, “A” and “B” each contribute in excess of $50 million (as adjusted) to A1 in exchange for the remaining authorized A1 stock (one-fourth each to “A” and “B”). A’s creation of A1 was exempt under Sec. 802.30; its $1500 sale of A1 stock to “B” did not meet the size-of-transaction filing threshold in Section 7A(a)(1).