any other issues or concerns relating to the Guides. The FRN sets August 27, 2012 as the deadline for filing comments.

A trade association representing jewelry industry members, Jewelers Vigilance Committee (''JVC''), requests a

[2] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] Acquisitions of non-corporate interests must confer control in order to be reportable.

[3] Indeed, the Second Circuit explained in . v. *X* ., ''[s]ince a patent is a form of property * * * and thus an asset, there seems little reason to exempt patent acquisitions from scrutiny under [Section 7 of the Clayton Act.]'' 645 F.2d 1195, 1210 (2d Cir. 1981).

[4] This rulemaking proposes to define when the transfer of rights to a pharmaceutical patent constitutes the acquisition of an asset. It in no way delimits the much broader definition of an asset for purposes of Sections 7 and 7A of the Clayton Act in any other context.

transfer of this bundle of rights is seen as a potentially reportable asset acquisition under the Act. If the licensor retains the right to manufacture, the deal is, in most instances, non-reportable. For instance, some licensing

the neurological therapeutic area. As discussed above, the proposed rule emphasizes the substance of what is being transferred, not the form that this transfer takes, even though the transfer will most often occur in the form of an exclusive license. When the recipient, typically a licensee, receives the exclusive rights to the patent in a therapeutic area, it is receiving the exclusive right to use the patent in that therapeutic area.

''All commercially significant rights,'' as defined in proposed § 801.1(o), flow from the exclusive rights to a patent. As a result of these exclusive rights, only the recipient has the right to use the patent in a particular therapeutic area, or specific indications within that therapeutic area, to generate eventual profits (some of which will be shared with the licensoons patent. p tranroyalt subo (will mosenciesr )Tju profits ally significant rights,'

discussemanuf(wuTsduct Assi eventualroyalt sub

[illegible] nmpliflculatquet re e exwith the hencies* (. )et Acquisiere eiretransfer

Tj the reci222 tent. As wuT

sle

svid

[5] ''Index'' filings pertain to banking transactions, and thus would not be affected by the proposed amendments. Index filings are incorporated, however, into the FTC's currently cleared burden estimates (the FTC has jurisdiction over the administration of index filings). They are mentioned here to distinguish them from and to further explain what a ''non-index'' filing is. Clayton Act Sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies, but only if copies of the information submitted to these other agencies are also submitted to the FTC and the Assistant Attorney General. Thus, parties must submit copies of these ''index'' filings, but completing the task requires significantly less time than non-exempt transactions (which require ''non-index'' filings), as illustrated by the calculations in footnote 6 below.

B will grant A an exclusive license to all of B's patent rights for all veterinary indications. B retains all patent rights for all human indications. The exclusive license to all commercially significant rights for all veterinary indications is an asset acquisition because A is receiving all rights to the patent for a therapeutic area.

3. B holds a patent relating to a biological product. B will grant A an exclusive license to all of B's patent rights in all therapeutic areas. A and B are also entering into a co-development and co-commercialization agreement under which B will assist A in developing, marketing and promoting the product to physicians. B cannot separately use the patent in the same therapeutic area as A under the co-development and co-commercialization agreement. A will book all sales of the product and will pay B a portion of the profits resulting from those sales. Despite B's retention of these co-rights, A is still receiving all commercially significant rights. The licensing agreement is an asset acquisition. This would be an asset acquisition even if B also retained limited manufacturing rights.

4. B holds a patent relating to an active pharmaceutical ingredient and a