

Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, September 30, 2022 11:49 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: Help on Interpretation - Size of Person of a Natural Person - Balance Sheet versus Transaction Value of Interests in Target Entity

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Friday, September 30, 2022 11:49:06 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Help on Interpretation - Size of Person of a Natural Person - Balance Sheet versus Transaction Value of Interests in Target Entity

[REDACTED]

You are correct that the Target's balance sheet should be used. However, we note that the last regularly prepared balance sheet prior to consummation is the one that is relevant to the analysis.

Best regards,

Kristin

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From: [REDACTED]
Sent: Thursday, September 29, 2022 4:13:27 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Help on Interpretation - Size of Person of a Natural Person - Balance Sheet versus Transaction Value of Interests in Target Entity

Greetings. Could we please ask your assistance in applying the size of person tests under the following circumstances:

Individual X, who is the UPE of the acquired person, has no regularly prepared balance sheet. Individual X holds more than 50% of the voting securities of the target company, "Target," and hence controls Target. Target has a regularly prepared balance sheet that is more recent than 15 months old and that shows assets less than the \$20.2 million lower size of person threshold. However, the value of the interests held by individual X in Target, as measured by the transaction value proposed to be paid for those interests in the proposed transaction, exceeds the \$20.2 million threshold. (For purposes of the example and for the sake of simplicity, we are assuming that individual X has no other assets apart from his interest in Target.)

ABA Premerger Manual Interpretation 94 states that, if individual X has no regularly prepared balance sheet and controls other entities, and if any of the entities controlled by the natural person has a regularly prepared balance sheet, the total assets shown on the balance sheet of any controlled entities would be included in Individual X's "size of person"; however, the value of the interest held in the controlled entity by Individual X would not be included.

Are we therefore correct in understanding that, under the stated circumstances, for purposes of determining the size of person of Individual X, Individual X's holdings in Target should be measured according to the total assets reflected on Target's most recent regularly prepared

balance sheet (which are less than the size-of-person reporting threshold) and **not** according to the value of those interests as measured by the transaction value to be paid for those interests in the proposed transaction (which are more than the size-of-person reporting threshold). Thank you for your help and guidance.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]