

## **Sheinberg, Samuel I.**

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**From:** HSRHelp  
**Sent:** Wednesday, December 14, 2022 2:07 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora  
**Subject:** FW: Consolidation vs series of acquisitions

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**From:** Fetterman, Michelle <mfetterman@ftc.gov>  
**Sent:** Wednesday, December 14, 2022 2:07:20 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Consolidation vs series of acquisitions

The transaction that you've described should be reported as a series of acquisitions.

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**From:** [REDACTED]  
**Sent:** Wednesday, December 14, 2022 11:33:28 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** Consolidation vs series of acquisitions

Dear All:

We are looking at a proposed, fileable transaction and would very much appreciate your guidance on whether you agree that it should be treated as a consolidation or a series of acquisitions.

### Relevant Entities

Fund A, Fund B and Fund C (the "Funds") are three funds in the same family, and each is its own UPE.

Fund C is a newly-formed Continuation Vehicle ("CV"), whose purpose is to acquire and hold operating entities currently owned by associated Funds A and B, who have reached the end of their investment period.

OpCos X1, X2 and X3, each of which is a partnership, are controlled by Fund A.

OpCo Y, a partnership, is controlled by Fund B.

All existing investors in Funds A and B will receive cash distributions from Funds A and B in relation to the value of the OpCos being sold to CV, and some will then invest that cash in the CV ("Rolling Investors") and receive interests in CV. There are also new investors who will invest cash in the CV.

All existing investors in Funds A and B will remain investors to some extent post-transaction (in respect of other portfolio companies that continue to be held by each fund).

### Transaction Structure

Funds A and B, and CV are each signatories to the purchase agreement. None of the OpCos is a signatory to the purchase agreement.

Step 1: CV is formed as a new partnership.

Step 2: Fund A sells all of its interests in OpCos X1-3 to CV in exchange for cash. Fund A continues in existence, and holds other investments that will be sold in the course of the next 18 months.

Step 3 (which under the purchase agreement will happen simultaneously with Step 2): Fund B sells all of its interests in OpCo Y to CV in exchange for cash. Fund B continues in existence, and holds other investments that will be sold in the course of the next 18 months.

Post-closing, all of OpCos X1-3 and OpCo Y are wholly-owned subsidiaries of CV, which will be its own UPE.

**HSR Analysis**

Rule 801.2(d)(2)(iii) states that “[a]ll persons party to a transaction as a result of which all parties will lose their separate pre-acquisition identities or will become wholly owned subsidiaries of a newly formed entity shall be both acquiring and acquired persons. This includes any combination of corporations and unincorporated entities consolidating into any newly formed entity...”

We note that Funds A and B will not lose their respective pre-transaction identities as UPEs. However, the transaction otherwise appears to be a consolidation because post-closing, OpCos X 1-3 and OpCo Y will be wholly-owned subsidiaries of newly-formed CV, which is its own UPE. Do you agree? Or should the transaction be reported as a series of acquisitions by CV? Thank you for your time and input.

Best regards,

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