

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, May 18, 2023 11:55 AM
To: Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: 802.30 Question [REDACTED]

From: Walsh, Kathryn E. <kwalsh@ftc.gov>
Sent: Thursday, May 18, 2023 11:55:10 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: FW: 802.30 Question [REDACTED]

Since the acquisition of the additional 49% is certain to occur, you must evaluate the acquisition of 100% of Corporation B for reportability now.

From: [REDACTED]
Sent: Wednesday, May 17, 2023 10:32:47 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: 802.30 Question [REDACTED]

Hello,

We are seeking guidance on a possible 802.30 exception.

Corporation A is its own ultimate parent. Corporation B is unrelated to Corporation A. Corporation B is nearly bankrupt and has approximately a \$4M book value. Corporation A will form a wholly owned merger sub ("Merger Sub") which will merge with and into Corporation B with Merger Sub surviving the merger. In exchange for all the capital stock of Corporation B, the stockholders of Corporation B will receive 49% of the voting securities of Merger Sub on a pro rata basis. No other consideration will be given to the stockholders of Corporation B for the merger (based on the value of Corporation B, this merger structure would not meet size-of-transaction). Following the Merger, Corporation A will hold 51% of the voting securities of Merger Sub, effectively controlling Merger Sub and being its ultimate parent entity. As part of the merger described above, on the fourth anniversary of the merger, Corporation A will have the obligation to purchase the remaining 49% of the voting securities of Merger Sub held by the former stockholders of Corporation B for the lesser of (i) a multiple of EBITDA (unknown and impossible to forecast) or (ii) \$250 million cash. Further, before the fourth anniversary of the merger, Corporation A has the option, but not the obligation, to purchase the remaining 49% of Merger Sub for \$250 million cash.

We believe that the subsequent purchase of the outstanding 49% of Merger Sub would be exempt under 802.30(a) as Corporation A would be both the acquired person and the acquiring person. Can you please advise? Thank you!

[REDACTED]