

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, June 27, 2023 4:03 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: 7A(c)(10)

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Tuesday, June 27, 2023 4:02:51 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: 7A(c)(10)

[REDACTED]
As long as the percentage is the same or lower at the end of the day, we agree.

Best regards,
Kristin
Kristin Shaffer
Attorney
Premerger Notification Office
Federal Trade Commission
202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Tuesday, June 27, 2023 3:22:39 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: 7A(c)(10)

Dear All:

I am writing to discuss the application of the exemption set forth in 7A(c)(10) of the HSR statute.

Assume that Fund A presently holds voting securities of Corp B. Under the terms of its agreement with Corp B, Fund A has a pre-emptive right to acquire additional voting securities of Corp B in the event other investors acquire voting securities of Corp B – so that Fund A’s percentage interest in Corp B’s voting securities is not diluted.

There will be a PIPE (Private Investment in Public Equity) investment in which another existing holder will add to its holdings of Corp B voting securities and will submit an HSR Act filing for that acquisition.

When the PIPE investment closes, Fund A would exercise its pre-emptive right and would receive, on the same day, additional shares of voting securities of Corp B in an amount equal to its pro rata holdings in Corp B. The value of the Corp B shares that will then be held by Fund A as a result of that pro rata exercise of its pre-emptive rights will exceed \$111.4 million. However, the percentage of Corp B’s voting securities to be held by Fund A will either remain the same or will slightly decline.

In this context, we believe that 7A(c)(10) applies—since the pre-emptive right is only triggered by the new PIPE acquisition, will be exercised on the same day as the PIPE acquisition, and will not result in any increase in Fund A’s percentage ownership of Corp B’s voting securities.

Do you agree?

Thank you.

[Redacted]

[Redacted]