

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, July 25, 2023 10:34 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: Request for Informal Interpretation

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Tuesday, July 25, 2023 10:34:05 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Request for Informal Interpretation

[REDACTED]

The information you have provided does not support the conclusion that the UPE of the acquiring person is controlled by state actors. Though some are, many asset managers, holding companies, and sovereign wealth funds are not considered to be state actors for HSR purposes. In order to determine the applicability of 802.52, you must determine whether a “foreign state, foreign government, or agency thereof (other than a corporation or unincorporated entity engaged in commerce)” holds the majority of the UPE of the acquiring person **AND** whether acquired entity is “organized under the laws that state” (or the acquired assets are located there).

Best regards,

Kristin

Kristin Shaffer

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From: [REDACTED]
Sent: Friday, July 21, 2023 5:10:47 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Request for Informal Interpretation

I am writing to confirm the PNO’s informal interpretation of 16 CFR 802.52, which exempts transactions from the requirements of the HSR act if “the ultimate parent entity of either the acquiring person or the acquired person is controlled by a foreign state, foreign government, or agency thereof...” We represent the acquiring entity. Specifically, we seek confirmation of our understanding of PNO Informal Interpretation 0805003.

The UPE of the acquiring entity is a foreign issuer, organized under the laws of and with its principle offices in Country Y. We understand that 802.52 would exempt the transaction if the UPE is controlled by a foreign state, foreign government, or agency thereof. Here, a majority of the voting securities of UPE is held by a three different instruments of the government of Country Y:

an investment holding company that is directly managed by an agency of the national government of Country Y

an asset management company controlled by the ministry of finance of Country Y

a sovereign wealth fund controlled by the finance bureau of a city within Country Y

In the aggregate, therefore, more than 50% of the voting shares of the UPE of the acquiring entity are controlled by a foreign state, foreign government, or agency thereof. PNO Informal Interpretation 0805003 (May 7, 2008) suggests that it is appropriate to aggregate the shares of the three governmental entities above in evaluating control over the

acquiring person. As we read that guidance, the PNO confirmed that in determining control of the UPE under 802.52, it was appropriate to aggregate the (NCI --equivalent) ownership interests held by the federal government of Country X and certain state governments thereof. We read that interpretation to confirm that it is appropriate to aggregate the interests of several government entities within the same foreign state government, including a state or local level government thereof, in determining whether the UPE is controlled by a foreign state, government or agency thereof for purposes of 802.52. Here, because each of the three entities above is a foreign government or agency thereof, and they collectively hold a majority of the voting shares of the acquiring UPE, the transaction would be exempt under 802.52.

Please let me know if you need any additional information. Thank you for your consideration of this request.

[REDACTED]

[REDACTED]