

## Sheinberg, Samuel I.

---

**From:** HSRHelp  
**Sent:** Wednesday, May 15, 2024 4:04 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter  
**Subject:** FW: Request for HSR guidance

---

**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Wednesday, May 15, 2024 4:04:23 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Request for HSR guidance

[REDACTED]

[REDACTED]

Since Fund A intends to acquire 100% of Fund B, Fund A should make one filing as a non-801.30, but must make the filing and observe the waiting period prior to either step of the transaction. The financials of the UPE are required since 803.4 does not apply.

Best regards,  
Kristin

**Kristin Shaffer**  
Attorney  
Premerger Notification Office  
Federal Trade Commission  
202-326-2388 | [kshaffer@ftc.gov](mailto:kshaffer@ftc.gov)

---

**From:** [REDACTED]  
**Sent:** Monday, May 13, 2024 4:30:52 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** Request for HSR guidance

I am writing to request guidance on a scenario involving a proposed merger of two funds. Assume that the size-of-transaction for the merger exceeds \$478 million so the size-of-person test does not apply. Assume that both funds have total assets in excess of \$239 million.

- Fund A intends to acquire Fund B through a merger of Fund B into a newly-formed subsidiary of Fund A (the "Merger"). Prior to the signing of the merger agreement, the Fund A also intends to enter into an agreement to acquire voting securities of Fund B that are currently held by stockholder C (the "C Purchase"). Stockholder C holds a non-controlling stake in Fund B valued in excess of \$119.5 million. The C Purchase would close prior to the closing of the Merger.
- If not for the Merger, the C Purchase would be a reportable as an 801.30 transaction. However, in light of the proposed merger, provided that either a letter of intent or definitive agreement has been executed for both the C Purchase and the Merger, could Fund A file for both transactions on the same HSR form? If so, could you confirm that Fund A would pay a single filing fee based on the value of the Fund B voting securities that will be held as a result of the Merger? Would it be considered a non-801.30 transaction because Fund B will be a party to the agreement/LOI covering the merger, or could the parties elect either 801.30 or non-801.30 treatment?

Separately, if a passive non-US investor were to be deemed the UPE of an acquired entity, could you confirm that it would suffice for Item 4(b) if the acquired entity's consolidated financials were provided in the acquired person's filing, but not the UPE's? Would any kind of stipulation or explanation be needed if the size-of-person test does not apply?

[Redacted text block]

---

[Redacted text block]