

Sheinberg, Samuel I.

From: HSRHelp
Sent: Monday, June 10, 2024 12:32 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: 802.10 Reorganization

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Monday, June 10, 2024 12:32:00 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: 802.10 Reorganization

[REDACTED]

[REDACTED]

We disagree. It appears that all (or most) of the individuals or entities that will be receiving voting securities of ListCo do not directly or indirectly hold interests in Initial TopCo. Instead, they hold minority interests in entities that hold minority interests in Initial TopCo (or other entities that themselves hold minority interests in other entities that hold minority interests in Initial TopCo). This breaks the chain in determining what is held directly or indirectly.

Best regards,

Kristin

Kristin Shaffer

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Friday, June 7, 2024 5:30:36 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: 802.10 Reorganization

Dear PNO,

We are writing to confirm our conclusion that the following “Up-C” transaction, which will be undertaken in conjunction with an initial public offering (“IPO”), is not reportable under the HSR Act. The transaction involves a pre-IPO reorganization through which an existing LLC that currently is its own Ultimate Parent Entity (“UPE”) will become a subsidiary of a newly created corporation (which will become the new UPE). The new corporation will issue voting securities to the existing LLC stakeholders in proportion to their LLC ownership interests immediately before issuing additional voting securities to new public shareholders via the IPO. Because none of the existing LLC interest holders will hold a greater percentage of the voting securities of the new corporation than they currently hold in LLC membership interests (nor will increase their direct or indirect ownership interests in the LLC), and because no new assets will be contributed during the re-organization, we believe the transaction is exempt pursuant to Rule 802.10.

The specific steps of the transaction are summarized below:

- **Pre-Transaction:** Initial Topco LLC (“Initial Topco”) currently is its own UPE. Certain of its LLC interests are held by various blocker entities and alternative investment vehicles, which in turn are held by various investors. Prior to the transaction, one of the existing minority LLC unit holders of Initial Topco, “IT Holder LP”, will

transfer a portion of its Initial Topco LLC units to certain of its limited partners. As a result, these IT Holder LP partners (which are themselves blocker entities) will become direct holders of certain Initial Topco LLC units.

- In the first step of the transaction, Initial Topco LLC will form a wholly owned subsidiary corporation, "Listco."
- Listco will form multiple blocker merger sub entities as subsidiaries. Certain of the blocker entities that hold minority LLC interests in Initial Topco LLC will then merge with these Listco merger subs, with the blocker entities surviving as wholly owned subsidiaries of Listco. Nearly simultaneously, the surviving blocker entities will be merged directly into Listco, with Listco surviving. In exchange, the current holders of the blocker entities will receive shares of Listco Class D common stock (carrying 10x voting power).
- Listco will also form a management company merger sub, which will merge with "Management Co.," another minority holder of Initial Topco LLC interests. As with the blocker entities above, Management Co. will survive the merger as a wholly owned subsidiary of Listco, but will be nearly simultaneously merged with and into Listco, with current Management Co. holders also receiving shares of Listco Class D common stock in exchange.
- Listco will then issue Listco Class C common stock (which will be non-economic voting securities also carrying 10x voting power) to Initial Topco LLC, which will distribute such shares to the remaining Initial Topco LLC interest holders (who will retain their economic units in Initial Topco LLC).
- Listco will also assume Initial Topco LLC options issued to employees and service providers and will convert those to options to purchase Listco Class A common stock (with 1x voting power).
- Listco will immediately commence an IPO pursuant to which it will sell Listco Class A common stock (with standard 1x voting power) to public shareholders for cash. Listco will then transfer the cash proceeds received in the IPO to Initial Topco LLC in exchange for a number of Initial Topco LLC units equal to the number of shares of Listco Class A common stock sold.
- As a result of the steps above Listco will become the new UPE, and will control Initial Topco LLC. All pre-transaction holders of Initial Topco LLC interests will receive proportional shares of Listco Class C common stock or Listco Class D common stock (which have equal voting power of 10x Class A stock). Public shareholders purchasing shares in the IPO will receive shares of Listco Class A common stock.

Because no new assets are being contributed as part of the pre-IPO reorganization, and because none of the pre-transaction holders of Initial Topco LLC will increase their ownership percentage in Listco, we believe Rule 802.10 exempts the transaction from HSR. (See <https://www.ftc.gov/legal-library/browse/hsr-informal-interpretations/1307003> treating a generally similar Up-C transaction as exempt.)

Please let us know whether you agree with this conclusion.

Thanks in advance for your time and consideration.

