

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, August 29, 2024 11:22 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Informal Interpretation Request

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Thursday, August 29, 2024 11:21:39 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Informal Interpretation Request

[REDACTED]

For the circumstances you describe, there would be two separate sets of filings, each with the appropriate fee. Please note in the cover letter and Item 3a that the sets of filings should be reviewed together.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Tuesday, August 27, 2024 3:48 PM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>; Burton, June <jburton@ftc.gov>; Larson, Peter <plarson@ftc.gov>
Subject: FW: Informal Interpretation Request

From: [REDACTED]
Sent: Tuesday, August 27, 2024 3:48:07 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Informal Interpretation Request

[REDACTED]

PNO Team,

We are writing to confirm the parties' filing obligations for a transaction in which there are two acquiring persons. Pursuant to a single agreement and as part of a single transaction, Buyer 1 and Buyer 2 are each purchasing 50% of the non-corporate interests of two target entities (each, a "Target," and together, the "Targets"). The Targets are indirectly owned by the same UPE. Buyer 1 and Buyer 2 do not share a UPE and are not setting up an acquisition entity to hold the non-corporate interests of the Targets; instead 50% of the non-corporate interests of each Target will be acquired by each of Buyer 1 and Buyer 2. Assume the size-of-transaction and size-of-person thresholds are met with respect to each of Buyer 1's and Buyer 2's acquisitions.

While not an identical situation, Premerger Notification Practice Manual, Fifth Edition, Interpretation #212 states that when "the acquiring entity has two UPEs, in general, each UPE must file a separate form and pay the appropriate filing fee" but does not provide for whether the acquired person must also file two separate forms. Given that it is a single transaction and the acquired person's Item 5 information would not be different if it made two filings, it seems to us that the acquired person could file one form identifying both of the acquiring persons in Items 2(a) and 3(a) and, if applicable, overlap with respect to one or both of the acquiring persons in Item 7.

Can you please confirm that (a) each of Buyer 1 and Buyer 2 would be required to file a separate form but pay a single filing fee (as this is one agreement and one transaction) and (b) the acquired person could file a single form as described above?

Best,

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