

Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, August 16, 2024 10:53 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Size of Transaction Question

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Friday, August 16, 2024 10:53:05 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Size of Transaction Question

[REDACTED]
So long as the Performance Shares are related solely to the partners' future employment and have no relationship to their roles (if any) as shareholders of Company B, we agree.

Best regards,

Kristin

Kristin Shaffer

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Thursday, August 15, 2024 2:17:03 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Size of Transaction Question

Hello,

We are writing to confirm our understanding that certain items included in the purchase price should be excluded to reach an accurate computation of the Size of Transaction in connection with determining the filing fee for a forthcoming HSR filing.

The Transaction

Company A, a publicly-traded corporation, is acquiring Company B, an LLP, by statutory merger of each party's wholly-owned subsidiaries, both LLCs. The purchase price is being paid in a combination of cash and Company A stock—directly payable to certain of the partners of Company B on a pro rata basis.

Of the Company A stock payable to Company B's partners, 5% of the shares are termed "Performance Shares" by the merger agreement, and are payable to certain former partners of Company B that remain employed by Company A on the 4th anniversary of the closing of the transaction. If such former partners of Company B leave Company A before the 4th anniversary of the closing, the Performance Shares allocable to those individuals are never issued. In the event that no such former partners of Company B remain in Company A's employ on the 4th anniversary, then Company A pays no Performance Shares.

The Conclusion

We understand that deferred or incentive compensation is not generally construed as consideration and thus should be excluded from the HSR Size of Transaction. See PNO Informal Interpretation 0706005. Based on the above, we believe that the Performance Shares constitute deferred or incentive compensation and thus should be excluded from the Size of Transaction.

Do you agree?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]