

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, September 19, 2024 8:42 AM
To: Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Consolidation - Backside filing

From: Walsh, Kathryn E. <kwalsh@ftc.gov>
Sent: Thursday, September 19, 2024 8:42:01 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: FW: Consolidation - Backside filing

In a consolidation shareholder backside, there is only an A side filing – we look to the filings for the consolidation for the Newco information.

From: [REDACTED]
Sent: Thursday, September 19, 2024 6:55:05 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Consolidation - Backside filing

Hi PNO team,

I have what is hopefully an easy question to answer in connection with the filing procedure for a minority investor in a consolidation. I understand that if two companies are consolidating under a new entity (“Newco”), that each company files as both acquirer and acquired entity. However, if a minority investor has a backside filing obligation, who files as the acquired party/acquired UPE? In the Premerger Notification Practice Manual #211 it notes:

[In a consolidation] Newco itself would not have a filing obligation as the acquired person in connection with the acquisition of voting shares of Newco by the stockholders of Corporation A and Corporation B. The stockholders of Corporation A and Corporation B who are not UPEs of either Corporation A or Corporation B, however, could have filing obligations as acquiring persons based on their acquisitions of Newco voting shares if threshold tests are satisfied and no exemption applies. Each such acquiring person with a filing obligation would have to pay (or caused to be paid) a separate HSR filing fee.

Does any entity file as the “acquired party” (B-side) or would there only be an A-side filing?

Thanks for your guidance!

Best regards,

[REDACTED]
[REDACTED]
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