

Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, October 23, 2024 3:09 PM
To: Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Question regarding transaction

From: Walsh, Kathryn E. <kwalsh@ftc.gov>
Sent: Wednesday, October 23, 2024 3:08:57 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: FW: Question regarding transaction

You should file for 100% now.

From: [REDACTED]
Sent: Monday, October 21, 2024 9:51:37 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Question regarding transaction

[REDACTED]

Dear PNO:

We have a question about how to properly report a transaction.

In the near future, Buyer will acquire 60% of Target's noncorporate interests. This transaction will be reportable.

Three years from now, which is to say well after the expiration of the HSR filing for the 60% acquisition, Buyer will acquire the remaining 40% of Target's noncorporate interests. This step is part of the current agreement.

It seems to us that, since the HSR for the 60% acquisition will have expired, we should file for the 60% acquisition now. (The 40% acquisition in three years would be exempt under 802.30.)

If one were required to file for a 100% acquisition, the transaction value would not be determined because the 40% acquisition is not priced yet. In that case, we would use the current fair market value of the 100%. This difference could affect the filing fee.

We are aware of prior informal interpretations (1903003 and 1408004) that have stated that when the second transaction is "mandatory" and the first transaction is not reportable, the parties must file before the first transaction based on the total value of both transactions. But here the first transaction is reportable and the second transaction would be exempt under 802.30 and would not take place for three years. Accordingly, it seems to us that filing for the 60% transaction would be correct in these circumstances.

Please let us know if you agree. Thank you.

[REDACTED]

[REDACTED]

[REDACTED]