

Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, January 5, 2022 9:34 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora
Subject: FW: Size of the Transaction Test Valuation Question [IWOV-IDOCS.FID4373725]

From: Musick, Vesselina <vmusick@ftc.gov>
Sent: Wednesday, January 5, 2022 9:33:36 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Size of the Transaction Test Valuation Question [IWOV-IDOCS.FID4373725]

[REDACTED]

You are correct that only the acquisition of voting securities (those securities that have the right to elect the board of directors) is reportable. The valuation must be made consistent with Rule 801.10. If a fair market valuation is required (e.g., if the value of the voting securities is not specifically stated in the agreement, which is required to have a determined acquisition price), it should be conducted on a reasonable basis, in good faith and reflect that the voting securities carry all of the rights to elect the board of directors. Additionally, including the allocation of the price between voting and non-voting securities in the merger documents instead of conducting a fair market valuation pursuant to Rule 801.10 could be a violation of Rule 801.90, if it is done to avoid a filing.

Kind regards.

Vesselina Musick

Attorney | Federal Trade Commission | Premerger Notification Office
Direct +1 202.326.2307 | Email: vmusick@ftc.gov | www.ftc.gov

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Tuesday, January 4, 2022 11:46 AM
To: Walsh, Kathryn E. <kwash@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>
Subject: FW: Size of the Transaction Test Valuation Question [IWOV-IDOCS.FID4373725]

From: [REDACTED]
Sent: Tuesday, January 4, 2022 11:45:28 AM (UTC-05:00) Eastern Time (US & Canada)
To: Walsh, Kathryn E. <kwash@ftc.gov>
Cc: [REDACTED]
Subject: Size of the Transaction Test Valuation Question [IWOV-IDOCS.FID4373725]

Hi Kathryn,

[REDACTED]

We are seeking confirmation as to whether a transaction would satisfy the Size of the Transaction (SOT) test in a scenario that is consistent with Interpretation 1901003, but with an additional fact that was not present in the analysis in Interpretation 1901003 (as described below). Our transaction is consistent with Interpretation 1901003 as follows:

- Buyer is purchasing 100% of the outstanding shares of Corporation for consideration in excess of the SOT threshold.
- Many years prior to the Seller's acquisition of the shares of Corporation, the prior owners of Corporation divided the shares of Corporation into two classes of stock. One class has voting rights and elects the board of directors. The other class of stock has virtually the same economic rights as the voting stock, but has no voting rights and does not have the right to participate in electing the board of directors.

- After acquiring Corporation, Seller did not change or modify the voting rights of the two classes of Corporation stock.
- Approximately 98% of the outstanding shares are non-voting shares and the remaining shares are voting.
- Because the economic rights are the same, Buyer and Seller will be allocating the purchase price on a per share basis equally among the voting and non-voting shares of Corporation, resulting in an amount well below the SOT threshold being allocated to the voting shares.

Based on facts consistent with the above in Interpretation 1901003, the PNO agreed with the conclusion that the transaction in that Interpretation was not reportable due to being below the SOT threshold. The additional fact in our transaction is that a single shareholder holds and is selling 100% of the outstanding voting and nonvoting shares (as opposed to separate shareholders holding the nonvoting shares). Does this additional fact affect or change the analysis? Thanks in advance for your time and attention.

[Redacted]

[Redacted]

[Redacted]