

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Wednesday, November 13, 2019 5:47 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: HSR question

From: Carson, Timothy
Sent: Wednesday, November 13, 2019 5:47:05 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: HSR question

Having a trustee of the acquiring person also serve as an officer or director of the acquired entity at the time of the acquisition could be “considered evidence of an intent inconsistent with investment purpose.” The facts and circumstances of the particular case would be evaluated if the agencies decided to investigate the described acquisition.

From: [REDACTED]
Sent: Wednesday, November 13, 2019 3:14:21 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: HSR question

Good afternoon:

I write to request your guidance on a potential transaction. Please assume the following facts.

The Foundation is a non-profit family trust that is its own UPE. It has three trustees who must unanimously agree on all decisions regarding the Foundation’s investment decisions. The trustees do not have beneficiary or pecuniary interest in the Foundation. The Foundation currently owns \$85M of voting securities of Company B, which is its own UPE. Two of the trustees of the Foundation are officers and directors of Company B. The Foundation currently plans to buy additional voting securities of Company B sufficient to cross the lowest HSR filing threshold, though the Foundation’s holdings in Company B will be less than 5%. Neither trustee has holdings of more than 10% in Company B, and decisions by the Foundation regarding Company B shares require unanimous approval of all three trustees. Does the fact that two of the Foundation’s trustees are also officers and directors of Company B preclude the Foundation from being eligible for the 802.9 investment only exemption?

Many thanks,

[REDACTED]

[REDACTED]

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