

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, August 12, 2021 11:54 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Musick, Vesselina; Shaffer, Kristin
Subject: FW: CONFIDENTIAL

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Thursday, August 12, 2021 11:54:22 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: CONFIDENTIAL

We agree that the acquisition of less than 50% of the LLC interests is not reportable. However, we disagree with your analysis of the possible future acquisition of LLC interests. Company A's acquisition of 50% or more of the LLC B's interests is a potentially reportable acquisition.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Wednesday, August 11, 2021 8:11 AM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>
Subject: FW: CONFIDENTIAL

From: [REDACTED]
Sent: Wednesday, August 11, 2021 8:09:55 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: CONFIDENTIAL

Dear PNO Staff,

This is a question about the definition of "acquisition" under the HSR Act. Company A, a publicly traded SPAC, plans to acquire less than 50% of the economic interests in LLC B and all of the voting rights in LLC B. In consideration for the acquisition, the selling members of LLC B will receive voting securities of Company A. The non-selling members of LLC B ("Non-Selling Members") will receive the right to put their interests in LLC B to Company A at some point in the future, in exchange for voting securities of Company A. Company A has no control over when, or whether, a Non-Selling Member will decide to exercise their put right. It is possible that only some, or no, Non-Selling Members will ever exercise that put right. Company A may not even know about a Non-Selling Member's exercise of the put right until the Non-Selling Member actually exercises that right. A 50% economic stake in LLC B, however, would satisfy the \$200 million, as adjusted, size-of-transaction threshold. Thus, it is possible that, at some point in the future, a sufficient number of Non-Selling Members would exercise their put right to cause Company A to hold 50% or more of the economic interests in LLC B, and that, as a result, Company A would hold a controlling stake in LLC B that is valued in excess of the \$200 million size-of-transaction threshold. Assume that no member of LLC B, now or in future, would make a reportable acquisition of voting securities of Company A.

Company A's contemplated acquisition of less than 50% of the economic interests in LLC B is not reportable because it does not confer control of LLC B to Company A.

In addition, we believe that Company A's possible future receipt of additional economic interests in LLC B as a result of Non-Selling Members' exercise of their put right, even if it causes Company A to hold 50% or more of LLC B's economic interests, is not a reportable event because it is not an "acquisition," but rather a maturation of inchoate rights outside of Company A's control. See PNPM No. 40. Thus, we believe that neither Company A's current acquisition of less than 50% of the economic interests in LLC B, nor Company A's future receipt of LLC B's interests as a result of Non-Selling Members' exercise of their put right, would require an HSR filing.

As always, your views in this respect would be much appreciated.

Best regards,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]