

Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, February 25, 2022 1:12 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora
Subject: FW: Question about Transaction

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Friday, February 25, 2022 1:12:25 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Question about Transaction

[REDACTED]
Based upon your description, we agree that the Trust should be treated as a non-corporate entity, as described in your second analysis.

Best regards,
Kristin
Kristin Shaffer
Attorney
Premerger Notification Office
Federal Trade Commission
202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Thursday, February 24, 2022 12:03 PM
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Question about Transaction
Dear Staff:

We would appreciate your assistance in determining whether an HSR filing would be required under the following facts, which as you will see involves the proper analysis of what amounts to a voting trust.

1. A is the Ultimate Parent Entity and holder of ~65% of the voting securities of Corporation, a Mexican publicly-traded corporation. The remaining ~35% of its shares are held by the public. B is a US person.
2. A and B will enter into a Trust Agreement to establish an irrevocable management trust ("Trust") under Mexican law. The Trust Agreement will identify the Trust's initial trustee. Neither A nor B will have the right to remove and replace the trustee unilaterally going forward.
3. Simultaneously with the creation of Trust, (i) A will contribute to Trust all of its Corporation shares (the "A shares"), valued above the applicable HSR size of transaction threshold; and (ii) B will contribute cash to the Trust's corpus.
4. The terms of the Trust Agreement will require the Trust to use the cash to commence a tender offer for the remaining 35% of Corporation's shares held by the public (the "B shares"), which are valued above the HSR size of transaction threshold. (Assume no other exemption applies.)
5. Pursuant to the Trust Agreement (i) A will be able to direct the Trustee on how Trust must vote the A shares and will incur the economic benefits (i.e., dividends) of the A shares; and (ii) B will be able to direct the Trustee on how to vote the B shares and will incur the economic benefits (i.e., dividends) of such shares.

[REDACTED]