

Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, August 17, 2022 10:52 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle
Subject: FW: Question re prior IPO guidance

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Wednesday, August 17, 2022 10:52:23 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Question re prior IPO guidance

We agree.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Monday, August 15, 2022 4:42 PM
To: Walsh, Kathryn E. <kwalsh@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>; Fetterman, Michelle <mfetterman@ftc.gov>
Subject: FW: Question re prior IPO guidance

From: [REDACTED]
Sent: Monday, August 15, 2022 4:41:18 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Question re prior IPO guidance

Hi everyone,

I am writing to confirm that the principles described in #41 of the ABA Antitrust Section's Premerger Notification Practice Manual (5th ed.) ("Practice Manual") and the citations therein apply to the facts described below.

Specifically #41 states that the "PNO takes the position that if the non-voting securities were acquired *prior* to the point in time when the issuer is deemed to be 'in registration,' the subsequent automatic 'conversion' to voting stock at the time of the IPO would not be considered a potentially reportable acquisition. Conversely, if the securities are acquired at any time *during* the time the issuer is deemed to be 'in registration,' then a filing must be made and the waiting period observed prior to the IPO and the resulting automatic conversion if the jurisdictional tests of the Act otherwise are satisfied and no exemption applies."

Stockholder X currently holds shares of Issuer Y Class B Common Stock and Series A Preferred Stock. Issuer Y is now considering an IPO and Stockholder X acquired such shares before Issuer Y was deemed to be "in registration" (and before the "quiet period" described in #41 of the Practice Manual).

Under Y's certificate, prior to the filing of an amended certificate in connection with an IPO (the "Restated IPO Certificate"), shares of Y's Series A Preferred Stock will automatically be converted into shares of Y's Class A Common Stock and shares of Y's Class B Common Stock will at the discretion of Y's Board (i) automatically be converted prior to the filing of the Restated IPO Certificate into shares of Y's Class A Common Stock or (ii) automatically be converted immediately prior to the filing of the Restated IPO Certificate into shares of any other class of Y stock selected by Y's Board.

Stockholder X does not have any representatives on Y's Board of Directors.

Assume that Stockholder X will not acquire any additional shares of Y at or about the time of the IPO, but its current shareholdings in Y would automatically convert into shares of a different class of Y stock as described above.

Question #1 – We understand that because Stockholder X acquired shares of Y Series A Preferred Stock before the “quiet period,” the automatic conversion of such shares into shares of Class A Common Stock of Y would not be a potentially reportable acquisition under the HSR Act. Do you agree?

Question #2 – We understand that because Stockholder X acquired shares of Y Class B Common Stock before the “quiet period,” the automatic conversion of such shares into shares of Class A Common Stock or shares of another class of Y stock upon Y’s IPO and as determined by Y’s board and described above would not be a potentially reportable acquisition under the HSR Act. Do you agree?

Thanks,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]