

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, August 15, 2023 1:18 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle
Subject: FW: Question Regarding Two-Step Merger

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Tuesday, August 15, 2023 1:17:32 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Question Regarding Two-Step Merger

Based on what you describe below, you can either file a non-801.30 (and submit the merger agreement) or under 801.30/as a CTO. If you decide to file under 801.30/as a CTO, please review both 801.30 and 803.5(a)(2).

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Tuesday, August 15, 2023 12:05 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 Regarding Two-Step Merger

From: [REDACTED]
Sent: Tuesday, August 15, 2023 12:05:00 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Question Regarding Two-Step Merger

Good afternoon,

I have a potential transaction involving a two-step merger. Pursuant to a merger agreement among Party A and Party B, the parties anticipate that a merger sub will acquire all outstanding shares of party A through a cash tender offer. Following the tender offer, the merger sub will then merge into Party A, with Party A continuing as the surviving corporation (and as a wholly owned subsidiary of Party B). It has been quite a while since I have dealt with a two-step merger and wanted to confirm the applicable waiting period, and whether this will be treated as a 801.30 transaction or a non-801.30 transaction for purposes of filling out Section 2(b) of the HSR filing. I have seen some guidance indicating that the analysis may be different where there is a tender offer contemplated by a consensual merger agreement, but would appreciate any guidance/confirmation as to the same.

[REDACTED]

