Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, November 30, 2023 11:03 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June
Subject: FW: Voting and Non-voting Securities

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Thursday, November 30, 2023 11:02:54 AM (UTC-05:00) Eastern Time (US & Canada)
To: [redacted]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Voting and Non-voting Securities

CONTROLLED

[redacted]
It appears that you have determined that a fair market value must made pursuant to 801.10. The board of directors of the acquiring UPE (or its delegee) must make this determination on a commercially reasonable basis and in good faith. While the PNO does not require or endorse any particular methodology, factors such as the acquiring person's ordinary course documents discussing valuation, and what a third party would pay for just the voting securities, without the acquisition of the non-voting securities (or just the non-voting securities, without the acquisition of the voting securities) may be relevant to the determination.
Best regards,
Kristin

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

From: [redacted]
Sent: Thursday, November 30, 2023 9:13:11 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Voting and Non-voting Securities

Dear Staff,
We would like to confirm that the analysis of an allocation of value between voting and non-voting securities has not changed. Our transaction involves Buyer purchasing 100% of the outstanding securities of Company A for approximately $135 million. For many years and for reasons that are unrelated to HSR, the securities of Company A have been divided into two classes of common stock. One class has voting rights and elects the board of directors. The other class of stock has the same economic rights as the voting stock, but has no voting rights and does not participate in electing the board of directors. The ownership of the two classes has changed over time, but has not changed since January 2014. Company A is currently owned by three shareholders, each of whom own 3 shares of voting common stock and 250 shares of non-voting common stock. Thus, more than 98% of the outstanding shares are non-voting shares, and the remaining shares are voting. Because the economic rights of the voting and non-voting shares are the same, we believe it is appropriate to allocate the purchase price and value of the transaction on a per share basis equally among the voting and non-voting shares, meaning that the vast majority of the value is allocated to the non-voting shares. Thus, the value of the voting securities being acquired is well below the current threshold for reportable transactions, and we believe this transaction is not reportable. We believe our situation is very comparable to Interpretation 1901003.
Please let us know if you agree with this analysis.
Thanks very much for your assistance and advice.
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]