

Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, December 6, 2023 9:03 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Categorization of Shares Acquired pursuant to an ESPP Plan (801.30 or non-801.30)

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Wednesday, December 6, 2023 9:03:23 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Categorization of Shares Acquired pursuant to an ESPP Plan (801.30 or non-801.30)

It is acceptable to file under 801.30(a)(6), and explain further in Item 3a.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Tuesday, December 5, 2023 3:20 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>; Burton, June <jburton@ftc.gov>; Larson, Peter <plarson@ftc.gov>
Subject: FW: Categorization of Shares Acquired pursuant to an ESPP Plan (801.30 or non-801.30)

From: [REDACTED]
Sent: Tuesday, December 5, 2023 3:18:49 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Categorization of Shares Acquired pursuant to an ESPP Plan (801.30 or non-801.30)

Dear all - I have a quick question on how best to categorize an acquisition for an upcoming filing and would very much appreciate your thoughts.

My situation involves a company insider who appears likely to trigger a filing in the near future - although not in the more typical ways (e.g., vesting of RSUs or exercise of options - both of which neatly fall into 801.30). Instead, the issuer that employs the insider has an ESPP plan. Unlike some other ESPPs, for this one when share purchases are made under the plan by employees, the shares are directly transferred into the brokerage accounts of the participating employees (which should then make them the holders of those shares, and not implicate 801.1(c)(3)-(5) and a situation in which the plan is deemed to hold the shares on behalf of its beneficiaries).

Functionally this looks very similar to the RSU vesting scenario, which is deemed to be 801.30(a)(6) conversion. However, it's not technically a conversion and - with this particular plan it appears to be a plan controlled by the issuer in the HSR sense (so I don't have the easy out of a purchase from a third party to loop it back into 801.30(a)(5)).

Assuming it is an acquisition "from" the issuer (with them controlling the plan) should I treat this as 801.30 (and under which subsection) or a non-801.30? If non-801.30, there really isn't any "agreement" to speak of here, so please let me know if there's something you customarily want to have included (or if it's a non-801.30 but an odd one with no agreement to attach).

Thank you in advance, and wishing you all the best for the holidays,

[REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



[REDACTED]
[REDACTED]
[REDACTED]

