

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, December 12, 2023 3:21 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: HSR Question -- 7A(c)(10) exemption

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Tuesday, December 12, 2023 3:20:26 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: HSR Question -- 7A(c)(10) exemption

[REDACTED]
We agree that 7A(c)(10) applies. If the reacquisition of the voting securities of Company Y by Mr. X (via his GRATs) is not complete by the second business day, then a filing would need to be made.

Best regards,

Kristin

Kristin Shaffer

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Monday, December 11, 2023 5:26:11 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: HSR Question -- 7A(c)(10) exemption

Dear PNO,

We are writing to confirm that the following transaction would be exempt under 7A(c)(10) which exempts from HSR filing requirements "acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer."

The Facts

Mr. X is the settlor of Trust X and one of its trust advisors, but he is not the UPE of Trust X. Trust X is its own UPE. Mr. X currently holds over \$111.4 million worth of voting shares of Company Y (and significantly less than 50% of the voting shares of Company Y). Mr. X plans to transfer Company Y voting shares valued at approximately \$2.4 million (the "Shares") to Trust X. Trust X will not as a result hold Company Y voting shares valued in excess of \$111.4 million. Mr. X in his individual capacity and as one of Trust X's advisors, along with the other advisors of Trust X, will instruct Trust X's trustee to transfer the Shares to two grantor retained annuity trusts (the "Two GRATs") in exchange for cash from the Two GRATs. Trust X's transfer of the Shares to the Two GRATs will occur on the same day that Mr. X transfers the Shares to Trust X or possibly the following business day. Mr. X is the UPE of the Two GRATs.

Questions

If Trust X transfers the Shares to the Two GRATs under Mr. X's HSR control on the same day that Mr. X transfers the Shares to Trust X, we understand that the c(10) exemption would apply because Mr. X would directly and indirectly hold the exact same percentage of Company Y shares at the beginning of that day and at the end of that day. Do you agree the 7A(c)(10) exemption would apply?

If Trust X transfers the Shares to the Two GRATs on the next business day after Trust X acquires the Shares from Mr. X, we understand that the c(10) exemption would still apply so long as on or before the day on which Mr. X

transfers the Shares to Trust X, Mr. X had instructed Trust X's trustee to transfer the Shares to the Two GRATs on the same day Mr. X transfers the Shares to Trust X or by the next business day. Cf. Informal Interpretation #17011005 (November 28, 2017) in which PNO explained the following: "In general, under T+2, when an investor buys a security, the brokerage firm must receive payment from the investor no later than 2 business days after the trade is executed. Similarly, when an investor sells a security, the investor must deliver the security to the brokerage firm no later than 2 business days after the sale. Day 1 is the first business day after the trade day. The PNO has historically applied the T+3 settlement cycle in connection with the 7A(c)(10) exemption, which exempts from HSR filing requirements 'acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer.' T+3 has primarily been used in the application of 7A(c)(10) where a company executive exercises stock options through a cashless transaction and immediately sells all of the stock that was received pursuant to the option exercise; or, where an executive arranges for restricted stock to be sold immediately upon vesting. The PNO will continue to apply the SEC's settlement requirements, and will therefore also shift its guidance from T+3 to T+2."

Do you agree that the c(10) exemption would apply if Trust X transfers the Shares to the Two GRATs under Mr. X's HSR control and pursuant to Mr. X's instructions on the business day following Mr. X's transfer of such Shares to Trust X?

Thanks,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]