

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, January 4, 2024 3:10 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: Questions

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Thursday, January 4, 2024 3:09:28 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Questions

- [REDACTED]
- [REDACTED]
1. Yes, a filing can be made on that basis.
 2. The value of the non-exempt assets would not cause the HSR filing to expire. Within the year after the waiting period expires, Company A would, however, need to (i) hold voting securities of Company B valued, pursuant to 801.10, such that Company A crosses the threshold for which it files, and (ii) acquire at least one share of Company B.

Best regards,

Kristin

Kristin Shaffer

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Tuesday, January 2, 2024 3:48:49 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Questions

Good afternoon, and happy new year! Please let me know your thoughts regarding the following questions.

Background – Assume the following:

- Company A, a US person, has over a period of time acquired on the open market voting securities of Company B (a US public company with significant foreign operations).
- The value of these securities is currently approximately \$200 million.
- Company A owns less than 50% of Company B and does not control its board.
- Company A's acquisition of shares in Company B has been exempt pursuant to Rules 802.4 and 802.50 because, based on publicly available information and Company A's own diligence, Company B and all entities it controls has not held non-exempt assets with an aggregate fair market value of more than \$111.4 million.
- Company A is considering acquiring additional voting securities of Company B. Company A is not aware of any increase in the fair market value of Company B's non-exempt assets above the current statutory threshold. However, Company A wants to ensure that it can continue to acquire voting securities of Company B without interruption if such information changes over time (for example, in any public filings).

Questions

1. In this context, can Company A file an HSR notification form on the basis that the fair market value of Company B's nonexempt assets may exceed the then-current HSR threshold, as long as it has a good faith intent to acquire additional shares of Company B?
2. If such a filing is made, is it correct that such filing will expire if, during the one year period following the expiration of the HSR waiting period either (i) the fair market value of Company B's nonexempt assets does not exceed the then-relevant HSR threshold, or (ii) the fair market value of Company B's nonexempt assets does exceed the then-relevant HSR threshold, but Company A does not acquire any voting securities of Company B after such occurrence?

[REDACTED]

[REDACTED]