Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, June 4, 2024 9:57 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Question re 801.2/802.51

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Tuesday, June 4, 2024 9:57:24 AM (UTC-05:00) Eastern Time (US & Canada)
To: [redacted]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Question re 801.2/802.51

[redacted]
Rule 802.51 is not available to Company B for the amalgamation. In determining whether a consolidation is reportable, each side must evaluate the transaction as an acquisition of 100% of the other party. The distribution of shares of the consolidated company to shareholders should be treated as potential backside filings, with each shareholder analyzing its acquisition of the combined company.
Best regards,
Kristin

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

From: [redacted]
Sent: Friday, May 31, 2024 11:26:00 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Question re 801.2/802.51

Dear PNO:
We write to confirm our understanding of the interplay between 801.2(d)(2)(iii) and 802.51.
Company A, which is a foreign issuer organized under the laws of Canada, intends to conduct a secondary sale whereby existing shareholders will sell Company A voting securities to a group of new investors. For a variety of tax and corporate law reasons, the transaction will be structured as follows:

1. Investors will invest in a newly-formed Canadian corporation (Company B).
2. Company B will acquire less than 50% of the voting securities of Company A.
3. Company A and Company B will amalgamate to form a new Canadian corporation, Company C, which will also be a foreign issuer.
4. After the amalgamation, Company B shareholders will receive voting securities in Company C. Company A voting securities held by existing investors will automatically convert into voting securities in Company C. No shareholder will acquire 50% or more of Company C's voting securities.

We understand that the amalgamation is treated as a consolidation under 801.2(d)(2)(iii) because each of Company A and Company B will lose their pre-transaction identity. This means that Company A and Company B are considered both an Acquiring Person and an Acquired Person. However, we believe the amalgamation should be exempt from HSR reporting requirements. First, the acquisition of Company B by Company A is exempt under 802.4 because Company B's only holdings are minority interests in Company A; it does not hold any assets in, or make any sales in or into, the United States. Second, the acquisition of Company A by Company B is exempt under 802.51 because both Company A and Company B are foreign persons and, as a result of the transaction, no single entity or individual will control Company A;

that is, the transaction will not confer control of Company A to any person or entity, as required by 802.51. For purposes of this hypothetical, you can assume that Company A exceeds the asset and/or sales thresholds in 802.51.
Can you please confirm you agree with the analysis above?