

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Friday, August 30, 2024 1:10 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: Confirmation of HSR Filing Mechanics for a Transaction

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Friday, August 30, 2024 1:10:22 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Confirmation of HSR Filing Mechanics for a Transaction

[REDACTED]

You have described two potentially reportable transactions: First, the primary transaction of Company B (its own UPE) acquiring Company C from Company A (UPE of Company C); second, the backside transaction (see [801.2\(e\)](#)), in which Company A (its own UPE) acquires additional voting securities and control of Company B (its own UPE). A separate filing with accompanying fee is required for each transaction, and the reporting should reflect the parties as they exist immediately before the primary transaction.

Because market price is the lowest closing price 45 days before the transaction's closing (but not earlier than the date of the agreement), there would be no additional fee if the stock price appreciates as you describe, as long as the transaction closes within 45 days of HSR filing or the stock price used for the valuation at filing remains above the lowest closing quotation within 45 days of the transaction closing date (see [801.10](#)).

Best regards,

Kristin

**Kristin Shaffer**

Attorney

Premerger Notification Office

Federal Trade Commission

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**From:** [REDACTED]  
**Sent:** Thursday, August 29, 2024 8:07:10 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Cc:** [REDACTED]  
**Subject:** Confirmation of HSR Filing Mechanics for a Transaction

Dear PNO:

We wanted to clarify and confirm a few HSR filing mechanics with you for the following proposed transaction ("Transaction").

We very much appreciate your guidance and confirmation in advance.

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Companies B and C are both affiliates of Conglomerate Holding Company ("Company A"). Company A owns 35% of voting securities of Company B (which is its own UPE) and owns 90% of voting securities of Company C. As the largest shareholder of Company B, Company A exercises *de facto* control over the operations of Company B (although it lacks the board appointment power over Company B). In the proposed conglomerate reorganization plan ("Transaction"), Company B enters into a fixed-ratio stock-for-stock merger agreement ("Agreement") with Company C. Under the Agreement, Company B will acquire control of Company C by issuing additional new voting securities of Company B and granting them in the agreed fixed ratio to all current voting shareholders of

Company C in exchange for Company C's outstanding voting securities. Post-transaction, Company B will be the surviving entity, and Company C will be merged into Company B and cease to exist. At the same time, Company A, by virtue of being the largest current shareholder of Company C, will acquire sufficient additional new voting securities of Company B to become the majority shareholder of Company B post-merger. Because the size of transactions for both "acquisitions" (by Company B and by Company A) will each be between \$2.146B and \$5.365B, both acquisitions satisfy the HSR notification thresholds, and no exemptions apply. Finally, Companies A and B are publicly traded, while Company C is privately held.

In the above scenario, we would like to confirm our understanding of the HSR filing mechanics for the Transaction, as follows:

1. We presently conclude that the Transaction is not subject to 801.30.
2. We conclude that the Transaction will not be exempt under 802.30, because Company A presently does *not* hold "50 percent or more of the outstanding voting securities" of Company B and therefore does not satisfy the requirement under 801.1(b)(1).
3. Company B is the acquiring person for Company C and therefore will submit its HSR notification form as the acquiring entity and its own UPE.
4. Company C will be the acquired entity, while Company A (Company C's UPE) will be the acquiring person (e.g., by obtaining control of Company B in the same stock exchange). Because the Transaction is part of Company A's conglomerate reorganization of its affiliates, Companies A and C will submit a single HSR notification form where (a) Company A (as Company C's UPE) will list itself as the "filing person"; (b) Company C will list itself as the "filing entity," (c) both Companies will furnish all required information from Company C (as the acquired entity) and Company A (as the acquiring person).
5. The Transaction will require a single HSR filing fee of \$830,000. Any of the three Companies may pay the HSR filing fee on behalf of all parties.
6. Assume that the Transaction will close within 45 days of HSR notification, but during those 45 days, the market price of Company B stock significantly appreciates in a manner that the size of transaction for both acquisitions crosses from \$5B into \$6B (e.g., crosses into the highest tier of HSR filing fees). To prepare for this contingency, the filing parties will initially submit a filing fee of \$830,000, but will wire an additional \$1.505M in filing fee, should the pre-closing stock price of Company B appreciate further as described above. In this situation, the PNO will consider the original HSR filings from the parties as valid and will not alter the applicable waiting periods on those filings.

Thank you very much for your confirmation.

[REDACTED]

