

Sheinberg, Samuel I.

From: HSRHelp
Sent: Monday, August 12, 2024 2:57 PM
To: Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Question Regarding Reportable Transaction Structure

From: Walsh, Kathryn E. <kwalsh@ftc.gov>
Sent: Monday, August 12, 2024 2:56:28 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: FW: Question Regarding Reportable Transaction Structure

As long as the parties can attest to their good faith intent to acquire 100%, filing for that amount is fine. Additional detail in Item 3(a) is always welcome.

The filing should be for non-corporate interests.

From: [REDACTED]
Sent: Thursday, August 8, 2024 6:05:43 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Question Regarding Reportable Transaction Structure

[REDACTED]

Good Afternoon,

We represent "Seller," which is the UPE of "Target." Seller is under negotiations with "Buyer" (Buyer is its own UPE) for the sale of all or the majority of the equity interest in Target. The parties have signed an exclusivity letter and term sheet and are hoping to file the premerger notification on these documents (a/k/a the LOI). Under the terms of the term sheet, Seller would sell 85% of the equity interest in Target to Buyer and retain 15%.

The issue however is that the parties are still exploring the possibility of Seller selling 100% of the equity interest in Target and in addition to Seller receiving cash for the 85%, also getting rollover equity in Buyer (in an amount equal to 15% of the total consideration for the purchase of Target).

Given that the rollover equity question is still to be determined, are the parties still able to file the premerger notification using the more "conservative" approach and treat the filing as if it would be a sale of 100% of the equity interest in Target and for Seller to receive 15% in equivalent rollover equity. This would be despite the fact that as the transaction progresses, it may later be decided that Seller would only sell 85%, retain their 15%, and not have any rollover equity. Would this result in the parties having to refile the premerger notification? If helpful, the parties can also add some clarifying comments and background to the transaction description portion of the notification.

A second question is that currently Target is a corporation, but Seller intends to convert Target into a limited liability company immediately before closing (as part of an F-Reorganization). In other words, at the time of submission of the premerger notification, Target will be a corporation, however, upon closing, Target will be a limited liability company. Should the premerger notification be filled out treating the acquired entity (Target) as (a)(i) a corporation, for the acquisition of (ii) voting securities; or should the premerger notification be completed to reflect the transaction at closing, which would be (b)(i) a limited liability company, for the acquisition of (ii) non-corporate interests?

Thank you again for your time.

Kind Regards,

[REDACTED]

