

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Tuesday, November 5, 2024 1:16 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: 7A(c)(10) Question

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Tuesday, November 5, 2024 1:15:46 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: 7A(c)(10) Question

[REDACTED]  
Thanks for your patience.

Because Lender A will acquire a greater percentage of voting securities than it currently holds, 7a(c)(10) does not apply. Therefore, the acquisition of voting securities would be reportable.

Best regards,

Kristin

**Kristin Shaffer**

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | [kshaffer@ftc.gov](mailto:kshaffer@ftc.gov)

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**From:** [REDACTED]  
**Sent:** Tuesday, November 5, 2024 10:35:23 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: 7A(c)(10) Question

Hi Kristin,

I wanted to check in to see if you have any additional questions on this.

Thanks for your time and consideration,

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** [REDACTED]  
**Sent:** Friday, November 1, 2024 9:31 AM  
**To:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: 7A(c)(10) Question

Kristin,

Yes, Lender A will acquire a larger percent of Debtor's outstanding voting shares than it currently holds.

Best regards,

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

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**From:** Shaffer, Kristin <[kshaffer@ftc.gov](mailto:kshaffer@ftc.gov)>

**Sent:** Thursday, October 31, 2024 2:00 PM

**To:** [REDACTED]

**Cc:** HSRHelp <[HSRHelp@ftc.gov](mailto:HSRHelp@ftc.gov)>

**Subject:** RE: 7A(c)(10) Question

[REDACTED]

Will Lender A acquire a greater percentage of voting securities or non-corporate interests in Debtor than it current holds?

Best regards,

Kristin

**Kristin Shaffer**

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | [kshaffer@ftc.gov](mailto:kshaffer@ftc.gov)

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**From:** [REDACTED]

**Sent:** Thursday, October 31, 2024 12:06:53 PM (UTC-05:00) Eastern Time (US & Canada)

**To:** HSRHelp <[HSRHelp@ftc.gov](mailto:HSRHelp@ftc.gov)>

**Cc:** [REDACTED]

**Subject:** 7A(c)(10) Question

Dear PNO:

We are working on a transaction involving a number of lenders and a Debtor who has filed for bankruptcy. Lender A currently holds less than 5% of Debtor's voting shares and all such shares held by Lender A will be cancelled as part of the plan of reorganization. Also pursuant to the plan, Lender A will then receive equity in the reorganized Debtor valued in excess of \$119.5 mm and 802.63 does not apply. The Debtor will then convert to an LLC and Lender A's shares will be converted into membership interests in the LLC that will not convey the right to 50% of the profits or assets of the LLC up on liquidation.

We would like to confirm that the exemption under 7A(c)(10) would apply, and the momentary receipt of voting shares pursuant to the bankruptcy plan would be exempt from HSR, because the percent of Debtor's outstanding voting shares held by Lender A at the end of the day will be less than the percent held by Lender A at the beginning of the same day, and what Lender A will hold is not subject to an HSR filing requirement. Debtor is organized as a corporation and (for tax-related reasons) in Step 8 of the effective date bankruptcy transactions Debtor will issue voting securities to the lenders. In Step 9 of the effective date bankruptcy transactions, which is expected to happen immediately after, but in any event on the same day as Step 8, the Debtor will be automatically converted into an LLC and the lenders' voting shares will be automatically converted into membership interests in the LLC. The conversion into an LLC will be required by the bankruptcy court order approving the plan of reorganization and will not require any consent or action by Lender A or any other lender. Lender A cannot prevent the conversion and there are no contingencies that could interfere with the conversion of the corporation into the LLC. As a result of these transactions Lender A will not hold LLC interests that convey the right to 50% or more of the LLC's profits or assets upon liquidation.

In sum, because of the required structure and order of bankruptcy transaction steps that are expected to take place on the same day, Lender A will i) have its existing voting shares in the Debtor cancelled; ii) receive and hold voting securities valued in excess of the HSR threshold for a moment in time and iii) pursuant to the bankruptcy court order, without any consent or other action required by Lender A, have all of its voting shares converted into an amount of LLC interests that would be exempt from the HSR Act's reporting requirements. In a similar scenario ([2312003 Informal Interpretation | Federal Trade Commission](#)) the PNO determined that a transaction that met the HSR Act's jurisdictional thresholds was exempt under 7A(c)(10) where transfers within the same day, when taken together, resulted in such person directly and indirectly holding the exact same percentage of Company Y's voting shares at the beginning of that day and at the end of that day. Here, Lender A will hold a smaller percent of Debtor's outstanding voting shares at the end of the day than it did at the beginning of the day.

Please let us know if Lender A is required to file HSR and observe the waiting period in connection with the voting shares it will only hold for a moment in time, or if this transaction is exempt under 7A(c)(10). We understand that if for any reason the conversion into an LLC were not to occur within the same day (or the following day) then a filing would need to be made.

Best regards,

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]