

Sheinberg, Samuel I.

From: HSRHelp
Sent: Monday, November 4, 2024 4:34 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Put/Call - HSR Question

From: Musick, Vesselina <vmusick@ftc.gov>
Sent: Monday, November 4, 2024 4:33:34 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Put/Call - HSR Question

Company A should file for the acquisition of the non-corporate interests of LLC X as an 801.30(a)(6) and should attest that it has a good faith intent to make the acquisition. The mechanics of the transaction, i.e. whether it will be through a put or a call option, can be provided in Item 3(a).

Kind regards.

Vesselina Musick

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From: [REDACTED]
Sent: Thursday, October 31, 2024 8:12:01 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Put/Call - HSR Question

Dear All,

We wanted to reach out to obtain your confirmation that we are thinking about an issue correctly. The relevant facts are as follows: Company A has a call right to require Company B to sell its interests in LLC X to Company A pursuant to LLC X's LLC agreement ("LLCA"). The LLCA also provides Company B a put right to require Company A to buy Company B's interests in LLC X: LLC X is not listed on any exchange. As a result of either the put or the call, Company A will acquire and thereafter control LLC X for HSR purposes, and the value of the interest would exceed the notification thresholds (please assume the size-of-person test is either not relevant or is exceeded).

The questions we would like confirmed are:

1. We believe that Company A could make an HSR filing based on the LLCA if it has a good faith belief that it will exercise the call option, treating the transaction as an 801.30(a)(6) conversion (see: <https://www.ftc.gov/legal-library/browse/hsr-informal-interpretations/0809012>). We do not believe any further "agreement" is required other than the applicable 801.30 requirements. Is that accurate?
2. If Company A has a good faith belief that Company B will exercise its put right within the next year, can Company A submit an HSR filing for Company B's put based on the LLCA and an affidavit saying that Company A has a good faith belief that the put will be exercised and has the good faith intention to acquire the interests in LLC X once Company B exercise its put, again treating it as an 801.30(a)(6) conversion? We believe the answer is yes so long as company A has a good faith intention to acquire the shares and believes the put will be exercised (see: <https://www.ftc.gov/legal-library/browse/hsr-informal-interpretations/1304013>, where the PNO indicated that the parties could submit a filing based on a put/call so long as the affidavit states the parties believe the put or call option is expected to be exercised). If you disagree, what type of additional "Agreement" or information would be required for Company A to file on the put?

3. In the same scenario as above, if Company A submitted an HSR filing for its call right and the HSR waiting period expired, and subsequently, Company B exercised its put (before Company A exercised the call), would the HSR clearance received cover the exercise of the put? We believe the answer is yes, because the same underlying substantive facts regarding transaction will take place.

If you could please confirm these three points, we would greatly appreciate it. Thank you very much.

Best regards,

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