

Sheinberg, Samuel I.

From: Sheinberg, Samuel I.
Sent: Tuesday, November 19, 2024 11:44 AM
To: [REDACTED]
Cc: HSRHelp
Subject: RE: Question regarding Warrant/NCI

[REDACTED]

We agree that this is a potentially reportable acquisition of non-corporate interests.

Sam

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Tuesday, November 19, 2024 10:37 AM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>; Burton, June <jburton@ftc.gov>; Larson, Peter <plarson@ftc.gov>
Subject: FW: Question regarding Warrant/NCI

From: [REDACTED]
Sent: Tuesday, November 19, 2024 10:36:51 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Question regarding Warrant/NCI

[REDACTED]

Dear PNO ~ I hope all is well.

We are reviewing a transaction in which Company A would acquire a warrant in LLC representing, upon exercise, the right to more than 50% of the profits and assets on dissolution of LLC. Under the terms of the warrant, however, Company A would have the pre-exercise right to profits/assets of LLC. Specifically, while Company A would only be admitted as a member of LLC upon exercise of the warrant under the LLCA (which exercise would grant additional rights), the warrant will be treated as an equity interest for tax purposes, and Company A would be entitled to receive (simultaneous with the distribution to the holders of units) the same dividend/distribution it would have received if the warrant had been exercised and Company A held noncorporate interests in LLC.

Could you advise as to whether the PNO would view this as the non-reportable acquisition of a warrant, or as the potentially reportable acquisition of a non-corporate interest given that the warrant provides Company A with the right to profits/assets of LLC pre-exercise?

Thanks very much in advance,

[Redacted]

[Redacted]

[Redacted]

[Redacted] ©

[Redacted]

[Redacted]

[Redacted]

by law. If you
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