

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Wednesday, December 4, 2024 1:44 PM  
**To:** HSR Auto Forward List  
**Subject:** FW: Question re: Cash Tender Offer with Contingent Consideration

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**From:** Walsh, Kathryn E.  
**Sent:** Wednesday, December 4, 2024 1:43:45 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED].  
**Cc:** HSRHelp  
**Subject:** FW: Question re: Cash Tender Offer with Contingent Consideration

Filing Fee - In this circumstance we disagree. Only the upper bound of the purchase price is not ascertainable, but the lower bound is determined. In this case, the fee should be based upon the lower bound. In Item 2(d), please state "at least \$X" and provide an endnote referencing this guidance.

Reporting Procedure - We agree that it's a tender offer, not a cash tender offer.

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**From:** [REDACTED]  
**Sent:** Tuesday, December 3, 2024 3:24:04 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp  
**Subject:** Question re: Cash Tender Offer with Contingent Consideration

You don't often [REDACTED]

Dear PNO –

I am writing to confirm the reporting procedure and filing fee threshold analysis for a cash tender offer that includes contingent consideration. Company A has announced a cash tender offer to acquire 100% of the voting securities of a publicly traded issuer, Company B. Consideration consists of (i) an initial, per-share cash payment to Company B's shareholders; and (ii) a contingent value right ("CVR") that would entitle Company B's shareholders to an additional per-share cash payment upon the achievement of certain milestones. The milestones are sufficiently speculative such that the acquisition price is not determined.

### Filing Fee Threshold

Based on 801.10(a)(1)(ii), I plan to use the market price to determine the Size of Transaction and corresponding filing fee threshold since the acquisition price is not determined. Note that if I used the initial cash payment on its own or the initial cash payment in combination with the contingent consideration, the filing fee to be paid would be considerably higher.

### Reporting Procedure

I understand that the 15-day waiting period does not apply to this transaction since the consideration includes a CVR (See Informal Int. 2012002). Even though the 15-day waiting period does not apply, I still plan to report this as a tender offer pursuant to 801.30(a)(3), and I will follow the notice requirements pursuant to 803.5(a).

Can you please confirm I've correctly analyzed the filing fee and reporting/notice requirements?

[REDACTED]

[REDACTED]

[Redacted] [m](#)

[Redacted]