Sheinberg, Samuel I.

From: Larson, Peter
Sent: Friday, February 21, 2025 10:17 AM
To: Sheinberg, Samuel I.
Subject: FW: Select 801.30 Transactions

From: Larson, Peter
Sent: Tuesday, February 18, 2025 2:12 PM
To: [redacted]
Cc: HSRRuleReview
Subject: RE: Select 801.30 Transactions

This is not a select 801.30, see 16 CFR Part 803, Appendix B.

Best,
Peter

Peter Larson
[redacted]

From: HSRRuleReview
Sent: Tuesday, February 18, 2025 12:38 PM
To: Larson, Peter
Subject: FW: Select 801.30 Transactions

From: [redacted]
Sent: Wednesday, February 12, 2025 9:10 PM
To: HSRRuleReview
Subject: Select 801.30 Transactions

[redacted]

Dear PNO:

I write to confirm whether a transaction qualifies as a "Select 801.30 transaction" under the new HSR rules. The definition of a Select 801.30 Transaction is:

A transaction to which § 801.30 applies and where (1) the acquisition would not confer control, (2) there is no agreement (or contemplated agreement) between any entity within the acquiring person and any entity within the acquired person governing any aspect of the transaction, and (3) the acquiring person does not have, and will not obtain, the right to serve as, appoint, veto, or approve board members, or members of any similar body, of any entity within the acquired person or the general partner or management company of any entity within the acquired person.

Company A received 801.30 notice from Investor 1 that Investor 1 intends to acquire additional voting securities that will exceed the next filing threshold in 16 CFR 801.1(h) (the "Acquisition"). Section 801.30 does apply to the Acquisition. There is no agreement or contemplated agreement between Investor 1 and Company A that governs any aspect of the Acquisition. Investor 1 will not acquire control of Company A as a result of the Acquisition. With respect to subpart (3) of the definition of Select 801.30 Transactions, a representative of Investor 1 does currently sit on Company A's board. This board appointment occurred as a result of a December 2023 letter agreement entered into between Company A and Investor 1 in connection with Investor 1's acquisition of pre-funded warrants to purchase Company A stock ("Letter Agreement"). Pursuant to the Letter Agreement, if Investor 1 had not nominated a candidate for appointment to the board by January 1, 2026, then Investor 1 would lose its right to do so. Investor 1 did nominate a candidate for appointment to the board pursuant to the Letter Agreement, which candidate was appointed to the board in February 2024, but Investor 1 has no continuing right to appoint another board member in the event that the current board member appointed by Investor 1 resigns. Company A and Investor 1 are in talks now to appoint another partner of Investor 1 to Company A's board, but if that does happen, it is because Company A's board chooses to do so and not pursuant to any contractual arrangement.

We do not consider this arrangement to be one where Investor 1 has the right to "serve as, appoint, veto, or approve board members" of Company A because Investor 1's right to nominate a candidate for appointment to the board under the Letter Agreement has terminated and Investor 1 has no future rights to do so. Can you please confirm you agree?

Thank you.

[redacted]

[redacted]

[redacted]