

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Wednesday, July 24, 2019 3:22 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Olson, Eric
Subject: FW: Acquiring Entity HSR Question

From: Carson, Timothy
Sent: Wednesday, July 24, 2019 3:21:47 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Acquiring Entity HSR Question

Responses below corresponding to your questions:

1. Yes, but it generally avoids errors and confusion to submit a form for each UPE in this type of scenario
2. One filing fee is due on these facts
3. Break it out: 25% for each acquiring person
4. As a result of the transaction, A will hold 70% and B will hold 70%.

From: [REDACTED]
Sent: Monday, July 22, 2019 12:08:24 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Acquiring Entity HSR Question

Hi,

I have a question on HSR filings where the acquiring entity has two UPEs.

The facts are as follows:

- A is a foreign natural person. B is a foreign limited partnership. A and B each currently holds 25% of Company X.
- A and B have formed a NewCo in which each holds 50%. Thus, A and B are both NewCo's UPEs.
- Shareholders C and D also currently each hold 25% of Company X.
- In the proposed transaction, NewCo will acquire 32.7% of Company X from Shareholders C and D. Company X will simultaneously buy back the remaining 17.3% of its own shares from Shareholders C and D.
- As a result of the transaction and buyback, NewCo will hold approx. 40% of the outstanding voting securities of Company X. A and B will each hold approx. 30% of the outstanding voting securities of Company X directly.

Questions:

1. It is our understanding that we can file a single Notification and Report Form on behalf of both A and B with NewCo as acquiring entity (see Informal interpretation 1311006). Please confirm.
2. Is the transaction subject to a single filing fee under 803.9(c)? Neither A nor B control any Item 6(a) entities other than NewCo. NewCo has no revenue. A (as a natural person) is reporting some interest/dividend income as Item 5 revenue. B is not reporting any Item 5 revenue. (Informal interpretation 1105001 suggests that even where the Item 5 information is not exactly the same, only one filing fee would apply in these circumstances.)
3. If reporting on a single HSR Form, how do we complete Item 2(d)(ii)? Do we aggregate A and B's current holdings (i.e. 50% total), list 25% for each of A and B, or put 0%, which is how much NewCo currently holds?
4. Similarly, if reporting on a single HSR Form, for Item 2(d)(iv), do we aggregate A, B and NewCo's resulting holdings (i.e. 100% total), list individually for A and B (70% each), or report only NewCo's resulting holding (40%)?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
