

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Tuesday, December 17, 2019 2:30 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: HSR Question about Affidavit and Certification

From: Carson, Timothy
Sent: Tuesday, December 17, 2019 2:30:09 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: HSR Question about Affidavit and Certification

Identify a person who will be an officer or director of BuyCo and have that person sign the affidavit and certification.

From: [REDACTED]
Sent: Tuesday, December 17, 2019 12:39:36 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: HSR Question about Affidavit and Certification

Good afternoon,

We seek guidance on who can sign an affidavit and certification on behalf of an acquisition vehicle that does not yet exist. Three companies (A, B, and C) are planning to form a new company ("BuyCo") to purchase stock of a target company. BuyCo will be its own UPE because each of A, B, and C will own one third of the BuyCo's shares and none of the three companies will have the power to appoint 50% or more of BuyCo's board of directors. A, B, and C seek to submit an HSR filing for the transaction before BuyCo's formation (BuyCo would be formed before closing). Because BuyCo is its own UPE, the HSR filing would have to be filed on behalf of a company that does not yet exist. May an officer or director of any of A, B, or C certify BuyCo's HSR filing and sign an affidavit stating the intention to form BuyCo and have BuyCo carry out the transaction as described in the HSR filing and deal document?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]