

## Sheinberg, Samuel I.

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**From:** [REDACTED]  
**Sent:** Tuesday, February 25, 2020 3:05 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Musick, Vesselina  
**Subject:** FW: Question regarding Items 2 and 3

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**From:** Whitehead, Nora  
**Sent:** Tuesday, February 25, 2020 3:04:46 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Question regarding Items 2 and 3

[Agree. Thanks for laying this out so clearly.](#)

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**From:** [REDACTED]  
**Sent:** Tuesday, February 25, 2020 10:23:24 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Subject:** Question regarding Items 2 and 3

Hello,

I have a question regarding how to report the following transaction in Item 2 and 3:

Acme Co. is buying all of the outstanding non-corporate interests of a business, Target. Target is its own UPE for HSR purposes. Target's non-corporate interests are held as follows: 33% by certain individual shareholders; 33% by Target Holdco 1, Inc., and 33% by Target Holdco 2, LLC. The two Holdco's have no assets other than their holdings of Target's non-corporate interests and are each their own UPE for HSR purposes. For various reasons, the transaction is structured as a simultaneous purchase by Acme of (a) 33% of Target's non-corporate interests directly from the individual shareholders, (b) the purchase of 100% of the voting securities of Target Holdco 1, Inc. of Target, and (c) the purchase of 100% of the non-corporate interests of Target Holdco 2, LLC. Following the transaction, Acme will hold 100% of the non-corporate interests of target, 33% directly and 64% indirectly through the holdcos. Neither of the holdco interest purchases in (b) or (c) would be reportable under the HSR Act, but the acquisition of 100% of Target's interest is reportable.

Since the acquisitions of the Holdco's are non-reportable, and this is essentially just the acquisition of Target, my view is we would report the transaction as the acquisition of 100% of Target. In Item 2(a), we would list the Holdcos as acquired persons along with Target but check the box indicating the Holdco acquisitions are non-reportable. In Item 2(b), we would only check the box for an acquisition of non-corporate interests. Item 2(c) is not applicable. In Item 2(d), we would report an acquisition of 100% of the non-corporate interests of Target and report the value as the total consideration paid for all three targets (as they are only vehicles for acquiring Target) as the consideration for the non-corporate interests. 801.30 does not apply to this transaction. We would fully describe the steps of the deal in Item 3. Do you agree?

Sincerely,

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]