
From: Whitehead, Nora
Sent: Thursday, December 03, 2015 9:20 AM
To: [REDACTED]
Cc: Walsh, Kathryn E.
Subject: RE: HSR Filing Question

Filing is required. State law trumps the contractual agreement.

Nora Whitehead
(202) 326-3262
Check out the [PNO Blog!](#)

From: [REDACTED]
Sent: Wednesday, December 02, 2015 4:56 PM
To: Whitehead, Nora
Subject: RE: HSR Filing Question

Nora,

Following up on my question from earlier today, I just learned that under state law Entity A will have the authority to appoint 100% of the board of Entity B when it becomes the sole member of Entity B, but the parties have reached a contractual agreement under which Entity A will not have the power to appoint 50% or more of the board members of Entity B but will have the power to appoint all of the replacement board members and the immediate power to remove board members for cause. Can you please confirm if these facts require an HSR filing?

Best Regards,

[REDACTED]

From: [REDACTED]
Sent: Wednesday, December 02, 2015 11:31 AM
To: 'Whitehead, Nora'
Subject: RE: HSR Filing Question

Yes.

From: Whitehead, Nora [<mailto:nwhitehead@ftc.gov>]
Sent: Wednesday, December 02, 2015 11:25 AM
To: [REDACTED]

Subject: RE: HSR Filing Question

Is this a non-stock, non-profit?

Nora Whitehead

(202) 326-3262

Check out the [PNO Blog!](#)

From: [REDACTED]
Sent: Wednesday, December 02, 2015 10:27 AM
To: Whitehead, Nora
Subject: HSR Filing Question

Nora,

I have a question about whether there is a filing obligation for a transaction in which Entity A will become the sole member of Entity B (a non-stock corporation). At the time of closing, Entity A will not have the power to appoint 50% or more of the board members of Entity B, but will have the power to appoint all of the replacement board members when a board member retires, resigns, or is removed, and the immediate power to remove board members for cause. Under these facts, would Entity A be deemed to acquire control of Entity B and therefore have an HSR filing obligation to report its acquisition of the assets of Entity B?

Thank you for the advice.

Best Regards,

[REDACTED]

[REDACTED]

[REDACTED]
