

From: Whitehead, Nora
Sent: Thursday, November 17, 2016 10:33 AM
To: [REDACTED]
Subject: RE: HSR Question re Foreign Bankruptcy

The 15-day waiting period would not apply to this foreign bankruptcy (and Interp. 230 in the premerger practice manual would be inapplicable). Because this is not a US bankruptcy under Section 363(b), anyone with the authority to sign on behalf of the acquired person may do so.

Nora Whitehead
(202) 326-3262

From: [REDACTED]
Sent: Tuesday, November 15, 2016 1:30 PM
To: Whitehead, Nora
Subject: HSR Question re Foreign Bankruptcy

Hi Nora,

I have a question regarding who should certify the HSR form for an acquired person in bankruptcy outside the U.S. In this case, Company (based in the U.S.) was the UPE of a foreign Subsidiary prior to the bankruptcy. Subsidiary is now undergoing a bankruptcy proceeding in a foreign country where, after an auction process, it will be sold by a trustee to Purchaser pending approval by a bankruptcy court.

Because this transaction appears to mirror a U.S. bankruptcy transaction under 363(b), would Subsidiary now be considered its own UPE? And would the trustee execute the certification and affidavit on its behalf (or, alternatively, if a debtor-in-possession, an officer of Subsidiary would sign)? Lastly, would this qualify for the shortened waiting period?

Thank you,

[REDACTED]