

Haynes, Lanea

From: Shaffer, Kristin
Sent: Monday, October 30, 2017 3:24 PM
To: [REDACTED]
Cc: HSRHelp
Subject: RE: HSR Informal Interpretation Request Regarding an ESOP transaction

[REDACTED]

We agree that 802.35 is available here.

Best regards,
Kristin

Kristin Shaffer

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From: [REDACTED]
Sent: Monday, October 30, 2017 9:07 AM
To: HSRHelp
Subject: HSR Informal Interpretation Request Regarding an ESOP transaction

Dear PNO Attorneys:

I am writing to confirm my understanding of the basis for non-reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), of a proposed ESOP transaction discussed below.

Proposed Transaction:

Company A is currently controlled by a Natural Person through a revocable trust that holds the majority of the voting securities of Company A. A trust (the "Master Trust") currently holds a minority interest in Company A voting securities. The Master Trust is a trust that meets the qualifications of section 401 of the Internal Revenue Code. The board of Company A has the power to appoint and remove trustees for the Master Trust. The Master Trust has two sub trusts – a 401K component and an ESOP component. The shares of Company A held within the Master Trust are in the ESOP. There is a Proposed Transaction with the following attributes:

- (1) All of the voting securities of Company A, other than those held by the Master Trust, will be redeemed by Company A.
- (2) The Master Trust will not receive any additional shares of voting securities of Company A in the Proposed Transaction. However, as a result of the redemption the Master Trust will go from holding a minority percentage of the voting securities of the Company to holding 100% of the voting securities of the Company.

(3) You should assume that the value of the voting securities of Company A that will be held in the Master Trust upon the completion of the redemption will exceed the HSR size-of-transaction test, and the size-of-person test is not applicable based on the value of those voting securities.

Conclusions:

My understanding is that the Proposed Transaction is exempt from reportability under the HSR Act. Specifically, I understand that:

- (1) The Proposed Transaction is exempt under 16 C.F.R. § 802.35 (“Rule 802.35”).
- (2) Rule 802.35 exempts the Proposed Transaction even though the Proposed Transaction is structured as a redemption of shares whereby the Master Trust will hold 100% of the voting securities of the Company upon the completion of the redemption, but will not acquire additional shares in the Company by virtue of the redemption.
- (3) Rule 802.35 exempts the redemption regardless of whether the Master Trust is instrumental to the redemption.
- (4) The applicability of Rule 802.35 is not impacted by the fact that prior to the consummation of the Proposed Transaction Company A is not its own ultimate parent.
- (5) The applicability of Rule 802.35 is not impacted by the fact that the ESOP is currently a unitized fund where employees hold units in the ESOP fund, and this may be changed such that upon the consummation of the Proposed Transaction the ESOP may be structured such that each participant’s account in the ESOP will be allocated shares.

Please let me know if you agree with the above analysis and conclusions. I appreciate your assistance with this matter.

Best regards,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]