

## Haynes, Lanea

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**From:** Shaffer, Kristin  
**Sent:** Wednesday, March 22, 2017 11:44 AM  
**To:** [REDACTED]  
**Cc:** Walsh, Kathryn E.  
**Subject:** RE: Aggregation Question

[REDACTED]

A should aggregate the total purchase price for LLC Y.

Best regards,  
Kristin

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**From:** [REDACTED]  
**Sent:** Tuesday, March 21, 2017 3:41 PM  
**To:** Walsh, Kathryn E.  
**Subject:** Aggregation Question

Kate:

I hope all is well. I have a question that I was hoping to run by you.

My client is A, which has entered into an agreement to acquire 100% of the voting securities of Issuer X, which is 100% controlled by B, for \$78 million.

As part of the same agreement, A will also be acquiring LLC Y, which is controlled 50% by B (through a trust that B controls by maintaining the unilateral right to replace the trustees) and 50% by C.

The purchase price for LLC Y is \$3 million, with \$1.5 million going to the trust for its 50% LLC interests and \$1.5 million going to C for its 50% LLC interests. The trust is irrevocable, but as noted above, B has the unilateral power to replace the trustees during his lifetime and thus, would be deemed to control the trust under 801.1(b)(2).

My question to you is what value is aggregated with the \$78 million for Issuer X.

While B and C are both UPE's of LLC Y and the acquisition is part of the same agreement of the acquisition of Issuer X, in substance, B will only be receiving \$1.5 million for its 50% LLC interest rather than the \$3 million total. The other \$1.5 million will be paid to an unrelated C. Thus, given that the total consideration received directly and indirectly by B is \$79.5 million, no HSR filing would be required.

I would welcome your thoughts.

Thanks

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