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**From:** Whitehead, Nora  
**Sent:** Thursday, April 07, 2016 2:04 PM  
**To:** [REDACTED]  
**Cc:** Walsh, Kathryn E.  
**Subject:** RE: FW: Inquiry re Put-Call Agreement for Acquisition of LLC Interests

We agree with your take. Please continue to seek informal advice on put-call arrangements (as suggested in Interp. 32 of the premerger practice manual). There are circumstances – for example, where the structure of the put-call arrangement is such that it is not a true option – where we will consider a put-call arrangement as an acquisition that may be reportable.

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

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**From:** [REDACTED]  
**Sent:** Thursday, April 07, 2016 10:29 AM  
**To:** Walsh, Kathryn E.; Whitehead, Nora  
**Subject:** Inquiry re Put-Call Agreement for Acquisition of LLC Interests

Hello Kate and Nora,

Please advise whether the HSR filing that will be submitted should report the acquisition of 100% of the LLC interest or 90.1% of the LLC interest of Target LLC, which is its own UPE under the following circumstances. Under informal opinion No. [0710009](#), it seems that this transaction should be reported as an acquisition of 90.1% of the LLC interests because beneficial interest and risk of loss of the remaining 9.1% will not be transferred to buyer.

The current transaction is that Buyer (a manufacturer) will acquire 90.1% of the interests in the Target from Sellers. In addition, Buyer and Holder of the remaining 9.9% LLC interests in Target will execute a separate put/call option agreement (to be executed at closing of the current transaction). Buyer and Holder will be able to exercise the option to buy the 9.9% during the 30 day period that follows the sixth year from the date that the current transaction closes. Buyer will pay additional consideration for the 9.9% at that time. The parties fully expect the remaining interests to be acquired during the option period and the acquisition is not conditioned upon the current acquisition.

The UPE-individual of Holder also is among the Sellers who will receive consideration in the current transaction, but the UPE-individual has decided to retain the indirect LLC interests that are held through Holder for tax and other reasons. Given that all rights, beneficial interests and risk of loss of the 9.9% will continue to be held and attributed to UPE-individual and Buyer will not receive such rights, beneficial interests or risk of loss, it seems that the acquisition of the 9.9% interests should not be included in the HSR filing for the current transaction. Note: Aggregating the Target LLC interests that UPE-individual holds indirectly through Holder and directly in the Sellers group will not make the UPE-individual the UPE of Target. Rather, UPE-individual's aggregate interest is approximately 39%.

Please advise before 4 pm (EDT) today, if at all possible as one party will be mailing its filing today. As always thanks very much for your guidance.

Best,

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]