Haynes, Lanea

From: Storm, Evan
Sent: Thursday, March 09, 2017 12:29 PM
To: [redacted]
Cc: Walsh, Kathryn E.; Whitehead, Nora
Subject: RE: Request for guidance

[redacted]
It would be calendar day prior. When the market closes would not change this.
Regards
Evan

From: [redacted]
Sent: Thursday, March 09, 2017 11:04 AM
To: Storm, Evan
Cc: Walsh, Kathryn E.; Whitehead, Nora
Subject: RE: Request for guidance

Thank you, Evan. Question #2 is not really about 802.21, but rather about calculating the market price. To take an extreme example, suppose the lowest closing price in the 45 days leading up to (and including) Day X is $5.00 per share, but on Day X+1 the closing price is $4.00 per share. If the acquiring person acquires more shares in an 801.30 transaction on Day X+1 after the close of trading, can they value their existing holdings at $4.00 per share?

From: Storm, Evan [mailto:estorm@ftc.gov]
Sent: Thursday, March 9, 2017 10:39 AM
To: [redacted]
Cc: Walsh, Kathryn E. <kwalsh@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>
Subject: RE: Request for guidance

[redacted]

Please see below in red.

Regards
Evan

From: [redacted]
Sent: Tuesday, March 07, 2017 5:42 PM
To: Walsh, Kathryn E.; Whitehead, Nora; Storm, Evan
Subject: Request for guidance

Kate, Nora, and Evan-

I have had a few questions arise recently on certain unrelated matters with respect to various HSR rules, and was hoping you could provide some guidance:

1) Can 802.21 be applied in the context of an acquisition of non-corporate interests? For example, if an acquirer files HSR for an acquisition of control of an LLC, then subsequently goes below 50%, can the acquirer exercise a warrant that

would confer control again within 5 years after the expiration of the waiting period for the initial acquisition, without triggering a new filing? No, 802.21 does not apply to non-corporate interests.

2) In an 801.30 transaction, if the acquisition takes place after the close of trading can the acquirer's existing holdings be revalued using the closing price from that date, or are they limited to the 45 days through and including the previous day for determining the market price? Please clarify or provide more detail for this question. Does this relate to 802.21?

3) If a CIM or third party document (assume it contains discussion of markets, market shares, etc.) was prepared within the last year for an abandoned transaction that only involved a subset (such as a single product line or manufacturing facility, where the seller has multiple others) of the assets that are involved in a subsequent reportable transaction, can these documents be excluded from Items 4(d)(i) and (ii) for the reportable transaction? Assume there is also a CIM (or document serving the purpose of a CIM) for the reportable transaction that will already be included as a 4(d)(i) document. If the document was revived for the new iteration of the transaction, it is responsive. If it wasn't revived, then it might still be responsive if the subset of assets was an important part, or made up a large percentage of the assets in the original iteration of the transaction. We would advise you to file this document.

4) Can you confirm that, even taking into account the PNO's October 2016 blog post on the valuation of LBOs, that you need not include in the size-of-transaction the amount of any new debt that is being entered into at closing for purposes other than serving as consideration to seller (i.e., in order to pay expenses, fund the target's ongoing operations, etc.)? New debt that is used to operate the business is not consideration going to the shareholders or to pay off pre-existing debt and can be excluded.

If you need further clarification on any of the questions above, please let me know.

Many thanks,

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]