

## Haynes, Lanea

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**From:** Storm, Evan  
**Sent:** Tuesday, April 04, 2017 1:21 PM  
**To:** [REDACTED]  
**Cc:** Walsh, Kathryn E.  
**Subject:** RE: HSR Inquiry -- Acquisition of Restricted Shares with Voting Rights. Cashless exercise of options.

[REDACTED]  
Please see below in red.

Regards

Evan

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**From:** [REDACTED]  
**Sent:** Tuesday, April 04, 2017 11:28 AM  
**To:** Walsh, Kathryn E.  
**Cc:** [REDACTED]  
**Subject:** HSR Inquiry -- Acquisition of Restricted Shares with Voting Rights. Cashless exercise of options.

Hi Kate,

Hope things are well with you in DC. I have a somewhat complicated situation involving an individual's holdings of restricted shares, and options to purchase voting shares, and would like to confirm my HSR conclusions with you. The facts and HSR analysis follow.

1. Five years ago the individual made an HSR filing and observed the HSR Waiting period before receiving the right to Restricted Shares of voting stock. Legal ownership in the shares was to vest years later. However, the individual was entitled to vote the shares when the grant was made. Since voting rights were being acquired on the grant of the shares, an HSR filing was made and the Waiting Period was observed before the restricted stock was awarded. Legal ownership of the restricted shares that were the subject of the initial HSR filing is now scheduled to begin passing to the individual. I assume, but seek to confirm, that a second HSR filing is not required since the shares were the subject of the first HSR filing per Informal Interpretations 1007006 and 0611006. I also seek to confirm that this conclusion is correct in light of the fact that the fifth anniversary of the initial filing (and the expiration of the Waiting Period) has passed and the exemption provided by §802.21 is no longer available. **A second filing is not required because for HSR purposes the individual is deemed to already hold the stock based on the first HSR filing.**

2. On a related question, the individual also holds options to shares that he will likely exercise at some point in the next year or two. The exercise of the options would not take the individual over a new notification threshold. While the §802.21 exemption is no longer available to cover the exercise of these options, I understand that a filing will not be needed if the options are exercised on a "cashless" basis as described in Premerger Notification Practice Manual (5<sup>th</sup>) Interpretation 34 and Informal Interpretations, 0210009 and 0505001. Can you confirm that this is still the position of the of the PNO and that such an exercise would not constitute an acquisition for HSR purposes, and hence would not trigger a filing obligation? **If the individual exercises the option and immediately sells the stock, then no filing is required. Since the five year period for the initial filing will have passed, if any portion of the stock is not immediately sold, and in the aggregate the individual holds voting securities in excess of a filing threshold, a filing would be required.**

As always, many thanks for your time and guidance.

[REDACTED]