

## Haynes, Lanea

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**From:** Walsh, Kathryn E.  
**Sent:** Thursday, June 08, 2017 10:55 AM  
**To:** [REDACTED]  
**Cc:** Gillis, Diana L.; Whitehead, Nora  
**Subject:** RE: HSR question

Correct.

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**From:** [REDACTED]  
**Sent:** Wednesday, June 07, 2017 9:36 AM  
**To:** Walsh, Kathryn E.  
**Cc:** Gillis, Diana L.; Whitehead, Nora  
**Subject:** RE: HSR question

Hi Kate,

Thanks for your response...just to confirm, you would use the 45-day low to calculate the room you have to reach the threshold?

[REDACTED]

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**From:** Walsh, Kathryn E. [<mailto:kwalsh@ftc.gov>]  
**Sent:** Wednesday, June 07, 2017 9:17 AM  
**To:** [REDACTED]  
**Cc:** Gillis, Diana L. <[dgillis@ftc.gov](mailto:dgillis@ftc.gov)>; Whitehead, Nora <[nwhitehead@ftc.gov](mailto:nwhitehead@ftc.gov)>  
**Subject:** RE: HSR question

In open market situations like this, you may rely on the market price. Only if there is some predetermined "acquisition price" will that then come into play (e.g., there would be a pre-determined acquisition price where an investor tells her broker to not pay more than \$x per share, or perhaps in the exercise of an option). Therefore, use the \$8 market price here to calculate the value of what is currently held, and what is to be acquired.

Additionally, if you have filed, then you have 1 year to cross a threshold. In that year, two things must happen – at least one acquisition of stock must be made, and the total stock held must cross the threshold – these do not have to happen simultaneously. In other words, you could buy at \$8 and not acquire enough to cross \$80.8M. In two months, the market price may have risen, such that a new calculation of your holdings is valued above \$80.8M. This would mean a threshold has been crossed (because both at least one acquisition has taken place, and the total value of stock held has crossed a threshold within the first year after filing).

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**From:** [REDACTED]  
**Sent:** Tuesday, June 06, 2017 9:12 AM  
**To:** Walsh, Kathryn E.  
**Subject:** HSR question

Hi Kate,

I just wanted to confirm the proper way to calculate market value for future voting share purchases after the 30-day holding period from an HSR filing expires. I understand that the market value for current holdings is calculated at the

45-day low, but I'm trying to figure how much room we have to reach the lower and upper threshold. Should I be using the current share price to determine market value for those thresholds? See the following example for filing the \$80.8 threshold :

Holdings at time of filing:            5m shares at \$10 (45-day low) = \$50m market value

It's 30 days later, let's say that the new 45-day low since filing is \$8 a share, but today's share price is up to \$9 a share and we want to purchase enough to reach the \$80.8m threshold. Our new current market value is \$40m and I'm assuming that we would use today's share price in the calculations of reaching that threshold? So, we would need to purchase approx. 4.54m shares at today's share price of \$9 to exceed the \$80.8m threshold...correct? I was reading some guidelines on the FTC site, and I was a little confused by the "higher of the acquisition price or fair market value" definitions in the valuation language.

Thank you and I look forward to hearing back!

[Redacted]

[Redacted]

[Redacted]