

Haynes, Lanea

From: Walsh, Kathryn E.
Sent: Tuesday, August 22, 2017 11:37 AM
To: [REDACTED] Berg, Karen E.; Shaffer, Kristin; Carson, Timothy; Gillis, Diana L.; Sheinberg, Samuel I.; Whitehead, Nora
Cc: [REDACTED]
Subject: RE: Query re: expiration of notification

[REDACTED]

The PNO has been asked this question before, and the unequivocal response has been that two filings for the same transaction may not be simultaneously active. The one year limitation in 803.7 is, in part, recognizing that changed circumstances one year after the end of a waiting period may warrant a fresh review of the transaction by the agencies. Under what you propose, a new filing could be submitted, and if there are such changed circumstances and the agencies would like to pursue a review, the parties could simply close pursuant to the first filing, thereby circumventing the very type of review the HSR Act and Rules are meant to enable.

Regards,

Kate

From: [REDACTED]
Sent: Monday, August 21, 2017 2:30 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Carson, Timothy; Gillis, Diana L.; Sheinberg, Samuel I.; Whitehead, Nora
Cc: [REDACTED]
Subject: RE: Query re: expiration of notification

Kate,

We were a bit surprised at this result. By withdrawing our initial filing and making another, there would necessarily be a period of time when we cannot close the transaction, even though we should have a full year to close under the initial filing. Could you please elaborate on the reason? We don't see anything in the Act or the Rules that would require this approach.

Regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Walsh, Kathryn E. [<mailto:kwalsh@ftc.gov>]
Sent: Monday, August 21, 2017 10:42 AM
To: [REDACTED] Berg, Karen E.; Shaffer, Kristin; Carson, Timothy; Gillis, Diana L.; Sheinberg, Samuel I.; Whitehead, Nora

Cc: [REDACTED]
Subject: RE: Query re: expiration of notification

[REDACTED]

You cannot have two filings for the same transaction pending simultaneously. If you are worried about meeting the September 28th deadline for closing, you will need to withdraw your original filing and make another (new number, new fee) as soon as possible.

Regards,

Kate

From: [REDACTED]
Sent: Friday, August 18, 2017 1:45 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Carson, Timothy; Gillis, Diana L.; Sheinberg, Samuel I.; Whitehead, Nora
Cc: [REDACTED]
Subject: Query re: expiration of notification

Dear all,

We would appreciate a response to the following scenario (the dates are hypothetical):

Our client filed for a transaction in 2016 and the waiting period expired after 30 calendar days (Early Termination was not requested). The parties have until 11:59 pm on September 28, 2017 to close the transaction under 803.7(a). Our client expects to close the transaction before that date but it is possible the closing could slip beyond September 28, 2017. The client is considering filing a new HSR notification by August 29, 2017 to ensure that it has continuous clearance beyond September 28th. We would like to confirm that, if a new filing is made but closing can occur before 11:59 pm on September 28, 2017, we may withdraw the August 2017 notification pursuant to 803.12(a) and close under the previously filed HSR in reliance on 803.7(a).

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]