

Haynes, Lanea

From: Shaffer, Kristin
Sent: Tuesday, September 12, 2017 1:49 PM
To: [REDACTED]
Cc: Carson, Timothy; Walsh, Kathryn E.; Berg, Karen E.; Gillis, Diana L.; Sheinberg, Samuel I.; Whitehead, Nora
Subject: RE: Two Short HSR Questions

- [REDACTED]
1. Correct, if the shareholder was instrumental, then there is a potential filing.
 2. No, there is no flexibility here. Depending on the timing of the acquisition, the acquiring person may wish to withdraw its current filing and submit a new filing. Otherwise, the acquiring person can wait for the current 1-year period to expire and then submit a new filing, if necessary. Either way, the new filing would trigger a new fee and waiting period.

Best regards,
Kristin

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From: [REDACTED]
Sent: Tuesday, September 12, 2017 11:44 AM
To: Carson, Timothy; Walsh, Kathryn E.; Berg, Karen E.; Gillis, Diana L.; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora
Subject: Two Short HSR Questions

All,

I have two short questions I would greatly appreciate your views on:

1. Interpretations 45 and 142 of the 2015 PNPM indicate that a shareholder who crosses an HSR threshold without making an acquisition has an HSR filing obligation if that shareholder was “instrumental” in causing the issuer to take the action that resulted in the shareholder crossing the threshold (for example, a buyback or redemption). Is this still the PNO’s position?
2. Is there any flexibility to the one year expiration set out in Rule 803.7 -- for example, if the triggering event has been delayed by circumstances outside the acquiring person’s control? Here, an acquiring person made an HSR filing to report its likely future crossing of a threshold and acquired shares of the issuer within the one year timeframe, but those acquisitions did not cause the acquiring person to cross the reported threshold. The event that will cause the acquiring person to cross the threshold may now be delayed by non-HSR regulatory review by a matter of days or weeks past the one year anniversary of HSR clearance. Does the acquiring person have any alternative other than re-filing and paying an additional fee?

Thanks very much; if you have any questions please let me know.