

Haynes, Lanea

From: Shaffer, Kristin
Sent: Friday, December 22, 2017 1:55 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Request for Informal Interpretation

[REDACTED]

We view this as an acquisition followed by a backside transaction. As such, the entities are viewed as they exist *going into* the transaction. Thus, SPAC's acquisition of A Corp is reportable. If SPAC only holds exempt assets (such as cash) prior to the transaction, then Person A's acquisition of the SPAC voting securities would be exempt.

Best regards,
Kristin

From: [REDACTED]
Sent: Wednesday, December 20, 2017 4:07:11 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Request for Informal Interpretation

Dear PNO Staff,

We represent a private equity fund ("Person A") that controls a non-corporate entity ("LLC A") which in turn controls a corporation ("A Corp"). Person A intends to sell A Corp to "SPAC," a publicly traded special purpose acquisition company which is organized as a corporation and is its own ultimate parent entity ("UPE"). The transaction will be structured as follows:

- The SPAC will create two wholly-owned merger subs ("Merger Sub 1" and "Merger Sub 2"). Merger Sub 1 will then be merged with and into A Corp, with A Corp continuing as the initial surviving corporation. As a result, A Corp will be a wholly-owned subsidiary of the SPAC (the "First Merger").
 - As consideration for the First Merger, at the closing, LLC A will receive cash and approximately 40% of the voting securities of the SPAC (subject to adjustment in accordance with the terms of the sale agreement). At the closing of the sale, the SPAC's existing shareholders will be diluted to an aggregate holding of approximately 60% of the SPAC's voting securities (subject to adjustment in accordance with the terms of the sale agreement). No single shareholder of the SPAC currently holds, or will hold after the closing, 50% or more of the SPAC's voting securities. After the closing, LLC A will have the right to designate 100% of the SPAC's Board of Directors. Accordingly, pursuant to 16 CFR §801.1(b), after the First Merger, Person A, through its ownership of LLC A, will control the SPAC.
- Immediately following the First Merger, A Corp will merge with and into Merger Sub 2, with Merger Sub 2 surviving as a wholly-owned subsidiary of the SPAC (the "Second Merger" and, together with the First Merger, the "Mergers"). Pursuant to 16 CFR §801.1(b), Person A will continue to indirectly

control the SPAC. The parties to the sale agreement intend that the Mergers, taken together, will qualify as a “reorganization” within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended.

The Second Merger is not HSR reportable pursuant to 7(A)(c)(10) of the Act. We are therefore requesting an interpretation regarding whether the First Merger is HSR reportable.

We have analyzed whether an HSR filing is required for the First Merger in two ways: 1) based on Person A as an acquiring person of shares in the SPAC, and 2) based on the SPAC as an acquiring person of shares in A Corp. We believe no filings are required by either scenario.

Person A’s acquisition of shares in the SPAC is exempt based on Section 7A(c)(10) of the Act and the reasoning described in Informal Interpretation [0501012](#). The interpretation states that, so long as the acquiring person acquires shares in a shell entity holding nothing more than the voting securities of the target (here A Corp), and the acquiring person holds the same percentage (or less) of the target as a result of the transaction, the acquisition of the shell’s voting securities would be exempt under Section 7A(c)(10) of the Act. The SPAC currently holds nothing except cash (primarily held in trust, as is typically done with special purpose acquisition companies), which is exempt pursuant to 16 CFR §801.21(a), and the two, newly-formed shell entities, Merger Sub 1 and Merger Sub 2. After the First Merger, Person A will hold a smaller percentage of A Corp’s voting securities than it did prior to the First Merger. Accordingly, we believe Person A’s acquisition of shares in the SPAC is non-reportable.

The SPAC’s acquisition of A Corp is not reportable because the SPAC will no longer be a “person” that “holds” voting securities that it did not hold prior to the First Merger (see 16 CFR §801.2(d)(2)(i) and (ii) and the reasoning in Informal Interpretation 812005 (agreeing that because the acquired person will no longer be a person as a result of the transaction, but rather a subsidiary of the acquiring person’s UPE, the acquired person cannot also be an acquiring person that holds any assets or voting securities which it did not hold prior to the transaction)). A person holds all assets and voting securities held by the entities included within it; in addition to its own holdings, an entity holds all assets and voting securities held by the entities which it controls directly or indirectly, 16 CFR §801.1(c)(8). After the First Merger, Person A will control the SPAC (through its right to appoint 100% of the SPAC’s Board of Directors), and no single shareholder of the SPAC will hold 50% or more of the SPAC’s voting securities. Accordingly, we believe the SPAC’s acquisition of shares in A Corp does not trigger an HSR filing obligation.

Please let us know if you agree or if we can provide any additional information to inform your analysis. As always, we appreciate your guidance.

Thank you,

[REDACTED]

[REDACTED]

[REDACTED]