

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Monday, July 23, 2018 5:37 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora; Cummings, Stephanie
Subject: FW: HSR Question

From: Carson, Timothy
Sent: Monday, July 23, 2018 5:37:06 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: HSR Question

Yes, you must aggregate when Buyer enters an agreement to acquire 100% of the non-corporate interests of four LLCs that are all within the same acquired person.

From: [REDACTED]
Sent: Monday, July 23, 2018 5:20:38 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: HSR Question

Hello,

My law firm is representing the Seller in a potential transaction and we have a question regarding the reportability thereof. In the proposed transaction, LLC A and LLC B would enter into a membership interest purchase agreement, pursuant to which, LLC A would purchase from LLC B one hundred percent (100%) of the uncertificated non-corporate interests in each of four wholly-owned limited liability company subsidiaries of LLC B. The aggregate acquisition price for the proposed transaction would exceed the threshold required for filing. However, if the aggregate acquisition price were to be allocated between the four wholly-owned subsidiaries, then the size-of-transaction test would not be met.

Our question is whether we are to aggregate the value of the non-corporate interests for each of the four entities when determining whether the size-of-transaction test has been met. 801.13(c)(1) provides guidance related to the aggregation of non-corporate interests in situations where the acquiring entity acquires non-corporate interests in the same unincorporated entity (which is not applicable here), but does not discuss the aggregation of non-corporate interests in different entities. It is our understanding that the non-corporate interests in each of the four subsidiaries are not to be treated as assets of LLC B, and, therefore, taking each acquisition separately, the size-of-transaction test is not met and an HSR filing is not required.

Can you please advise as to whether we are to aggregate the value of the non-corporate interests for each of the four wholly-owned subsidiaries when determining whether the size-of-transaction test has been met?

Please let us know if you need any clarification or additional information.

Thanks,

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[Redacted text block]

[Redacted text block]