

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Tuesday, September 11, 2018 9:34 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Whitehead, Nora
Subject: FW: Size of Person Test

From: Shaffer, Kristin
Sent: Tuesday, September 11, 2018 9:34:27 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Size of Person Test

Yes, that is correct.

Best regards,
Kristin

Kristin Shaffer

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From: [REDACTED]
Sent: Monday, September 10, 2018 7:02 PM
To: [REDACTED]
Subject: Size of Person Test

Hi folks.

I have a question about the size of person test and would appreciate your guidance.

Company Y is acquiring certain voting shares of Company X and we are assessing whether the HSR size of person test would be satisfied. If Company X's UPE has less than \$16.9 million in total assets, the size of person test would not be satisfied because Company X (including its UPE) is not engaged in manufacturing and had less than \$168.8 million in annual net sales in its most recent year.

Mr. A holds 49.5% of the voting shares of Company X under 16 C.F.R. Section 801.12 and also holds an irrevocable proxy to vote Mr. B's shares of Company X. Because of the irrevocable proxy, Mr. A is the UPE of Company X because he has the power to vote over 50% of the Company's voting shares for directors.

When Mr. A is assessing whether he has at least \$16.9 million in total assets, may he disregard the value of his 49.5% interests in Company X (whether such interests are recorded on his regularly prepared balance sheet or whether he has to create a pro forma balance sheet) because he will have to include 100% of the assets of Company X with his other qualifying assets?

Thanks for you help.

