

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Monday, December 10, 2018 2:30 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora
Subject: FW: Size-of-person question

From: Carson, Timothy
Sent: Monday, December 10, 2018 2:29:58 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Size-of-person question

Assuming the facts support the conclusion that SPV2 is its own UPE, we agree the acquisition will not satisfy the size-of-person test.

From: [REDACTED]
Sent: Thursday, December 6, 2018 3:05:34 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Size-of-person question

I have a question relating to an acquisition to be made by a political subdivision of a US state (the "Agency"). Assume the Agency wholly owns a special purpose vehicle ("SPV1") through which it holds a non-controlling interest in an LLC (the "Target"). For independent business reasons unrelated to HSR, the Agency intends to form a separate special purpose vehicle ("SPV2") to acquire the remaining interests in the Target in a two-step transaction under a single purchase agreement (the "Agreement"). At the initial closing SPV2 will acquire more than 50% of the outstanding LLC interests of the Target for more than \$84.4 million and, on or prior to the 12-month anniversary of the initial closing, SPV2 will acquire the remaining interests in Target not held by SPV1 for additional consideration. The total acquisition price for both closings under the Agreement is less than \$337.6 million.

Since it will be wholly owned by the Agency, SPV2 will be its own UPE and we understand that the total assets and annual net sales of the Agency and SPV1 need not be taken into account for determining SPV2's size-of-person. (See informal interpretation 1312005.) Prior to the initial closing SPV2 will not have a regularly prepared balance sheet, and its only assets will consist of cash to be used as consideration for the acquisition of Target's LLC interests under the Agreement (and possibly transaction-related expenses). Therefore, we understand that the entire transaction is non-reportable since SPV2 will not meet the size-of-person test. Please confirm.

[REDACTED]

[REDACTED]

