

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Monday, March 04, 2019 10:00 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Biagioli, Kimberley; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne
Subject: FW: CONFIDENTIAL

From: Whitehead, Nora
Sent: Monday, March 4, 2019 10:00:10 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: CONFIDENTIAL

Agree.

From: [REDACTED]
Sent: Sunday, March 03, 2019 2:36 PM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Biagioli, Kimberley <kbiagioli@ftc.gov>; Carson, Timothy <tcarson@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>
Subject: FW: CONFIDENTIAL

From: [REDACTED]
Sent: Sunday, March 3, 2019 2:36:11 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: CONFIDENTIAL

Dear PNO Staff,

This is a question about the treatment of target debt for purposes of measuring the size of transaction in an acquisition of voting securities. Prior informal interpretations make very clear that, when existing debt of the target is going to be paid off at closing from the proceeds paid by buyer, the amount of that debt is excluded from the calculation of the size of transaction. I now write to make sure that you concur that the same rule applies even when that existing debt arose in connection with the earlier acquisition of the target by the current seller.

In the contemplated transaction, Buyer A will acquire all of the voting securities of Target B from Seller C. At closing, Buyer will pay an amount that exceeds the \$50 million (as adjusted) threshold, but some of that payment will go to pay off existing debt for which Target B and Seller C are jointly liable (in other words, both Target B and Seller C are liable for the entire amount of the debt). Once the debt is paid off at closing, the amount that Seller C will receive for the voting securities of Target B is below the \$50 million (as adjusted) threshold. The debt in question arose some time in the past when, in an entirely separate transaction, Seller C acquired Target B and paid for that acquisition, in part, with funds raised through a loan from a third party. Both Target B and Seller C are jointly liable to that third party for the loan.

On the above facts, I believe that the acquisition is not reportable because the size of transaction test is not satisfied. As always, I would appreciate your thoughts on this point.

Regards,

[Redacted]

[Redacted]

[Redacted]

[Redacted]