

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Thursday, July 11, 2019 1:02 PM
To: Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Olson, Eric
Subject: FW: Request for Guidance

From: Walsh, Kathryn E.
Sent: Thursday, July 11, 2019 1:02:04 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Request for Guidance

You must look at the acquisition price at the time of closing.

From: [REDACTED]
Sent: Tuesday, July 9, 2019 8:00:29 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Request for Guidance

We would appreciate it if you could please provide guidance on the following.

Company A is purchasing substantially all of the assets of Company B for a purchase price of \$70 million. Additionally Company A is agreeing to assume the outstanding balance of Company B's revolving line of credit at the closing date.

The revolving line of credit fluctuates greatly through the year, from zero at times and well over \$20 million during the inventory purchasing period. The actual outstanding balance of Company B's revolving line of credit at closing will not be known until the closing date, but may exceed \$20 million.

For purposes of determining whether an HSR filing is required, Company A's board of directors, within 60 days prior to the closing date, has determined that (i) the acquisition price (as described in Section 801.10(c)(2) of the HSR Regulations) is not determined, because the amount of Company B's revolving line of credit to be assumed at closing was unknown at such time, (ii) the fair market value (as described in Section 801.10(c)(3) of the HSR Regulations) of the assets being acquired from Company B is less than \$90 million and (iii) accordingly, an HSR filing would not be required.

If the revolving line of credit exceeds \$20 million at the closing date (which would result in a transaction value in excess of \$90 million), can you confirm the FTC's position on the relevant date for purposes of determining the acquisition price. Would it be the date on which Company A's board of directors made its determination in connection with its determination of fair market value (i.e., would Company A's determination of the acquisition price made prior to the closing date control even if the actual transaction value at closing exceeds \$90 million (assuming the determination was made in good faith))? Or, is the amount of the acquisition price that becomes known on the closing date the relevant amount for purposes of determining whether an HSR filing is required?

Thank you for your consideration.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]