

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Friday, August 16, 2019 11:12 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Whitehead, Nora
Subject: FW: Acquisition of Less Than 5% of Shares on Secondary Market

From: Six, Anne
Sent: Friday, August 16, 2019 11:11:38 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Acquisition of Less Than 5% of Shares on Secondary Market

[REDACTED]

Under these facts, 802.9 doesn't apply.

If the client begins to accumulate shares, it will have to file before it crosses a statutory size of transaction threshold, assuming the other statutory tests are met. <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/steps-determining-whether-hsr-filing>

Best,
Anne

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From: [REDACTED]
Sent: Thursday, August 15, 2019 3:31:14 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Re: Acquisition of Less Than 5% of Shares on Secondary Market

Hi,

Thank you in advance for your help and clarification on the below-

A client is looking to acquire less than 5% of the shares of a competitor on the secondary market.

I know under Section 802.9, this does not have to be reported if it is made for investment purposes and less than 10%.

My question is if the client is unsure of whether they will eventually acquire the company, does it have to be reported? i.e., they are unsure if whether they want to acquire the company now but it might change some time in the future.

And as a follow up question – if the client DOES want to acquire the company eventually and is now slowly accumulating shares to do so, when does it become reportable? i.e. at what % will it have acquired the stock in the target for it to report?

[REDACTED]

[REDACTED]