

## Sheinberg, Samuel I.

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**From:** [REDACTED]  
**Sent:** Thursday, August 22, 2019 1:20 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne  
**Subject:** FW: HSR Debt Question

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**From:** Whitehead, Nora  
**Sent:** Thursday, August 22, 2019 1:20:09 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: HSR Debt Question

You cannot deduct the repayment of debt in an asset acquisition. This is the case regardless of whether the target has secured the debt.

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**From:** [REDACTED]  
**Sent:** Thursday, August 22, 2019 10:28:51 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** HSR Debt Question

We are writing to seek clarification about your February 16, 2017 update to [Informal Interpretation 1211011](#). The update states that "the PNO's current position is that the repayment of debt may be deducted from the acquisition price only where the debt is held by, or secured by, Target." Our question is about what it means for a debt to be "secured by[] Target." Does it include debt secured by purchased assets in an acquisition of assets?

For example, assume that Company A is acquiring assets from Company B and Company B used a portion of the target assets as collateral to secure a \$30 million debt. Company A will buy the assets for \$110 million, \$30 million of which will be used to pay off debt secured by the assets. In this example, the debt being paid off belongs to Company B, the seller of the target assets, but the target assets being bought were used to secure the debt. In this scenario, would the transaction price be \$80 or \$110 million dollars?

Would the PNO treat this differently if the target assets used to secure the debt were acquired through a secured transaction subject to UCC Chapter 9?

Thanks,

[REDACTED]

[REDACTED]

[Redacted]

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