

Sheinberg, Samuel I.

From: Sheinberg, Samuel I.
Sent: Tuesday, February 18, 2020 12:37 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: HSR Questions

Question 1: Correct, the thresholds apply to the acquisition of voting securities and not NCI.

Question 2: Yes, if buyer is acquiring additional NCI you would aggregate if the NCI already held plus the additional NCI being acquired confers control.

[REDACTED]

From: [REDACTED]
Sent: Tuesday, February 18, 2020 7:51:18 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: HSR Questions

Hi PNO group. I have two questions on a potential deal. I think I know the answer, at least to the first question, but want to make sure. I'm not sure I know the answer to the second question.

The client is an LLC with membership interests. As part of a contemplated recapitalization, another firm (I'll call them the buyer) would acquire a minority stake in the LLC in two stages that are spaced out in time. The recapitalization would not result in a change of control, as the buyer will not have the right to 50 percent or more of the profits, or the right, in the event of dissolution, to 50 percent or more of the assets, of the LLC.

The parties further contemplate that the buyer will have the option, at some future date, to acquire additional non-corporate interests (NCI) and thereby obtain "control" of the LLC under the HSR rules. At this point, however, neither side knows if the exercise of this option will ever happen.

Assume for the purpose of my questions that the NCI to be acquired in stage 1 and stage 2 would potentially require an HSR filing if there was a change in control of the LLC.

First question: There are thresholds for acquisitions of voting securities short of 50%. It is my understanding from the form and what I have read that those thresholds would not be applicable to NCI. With NCI, HSR filing obligations are triggered if there is a change in "control." I want to confirm this, as NCI and voting securities acquisitions are elsewhere treated similarly.

Second question: Let's assume that the buyer acquires a non-controlling interest in the LLC now and, after some period of time (let's assume within 5 years) decides to exercise the option to acquire "control" of the LLC by acquiring more NCI. My assumption is that even if that later transaction was valued at less than \$94 million (or whatever the applicable

minimum threshold was at the time), there would still be a filing required on sort of a “look back” basis. The buyer would aggregate the value of the NCI it holds with the value of NCI it would be acquiring, and that would end up being the transaction value. Is that correct?

Thanks as always for your guidance. There is no desire to avoid a filing, only to know if and when one would be required.

[REDACTED]

[REDACTED]

[REDACTED]