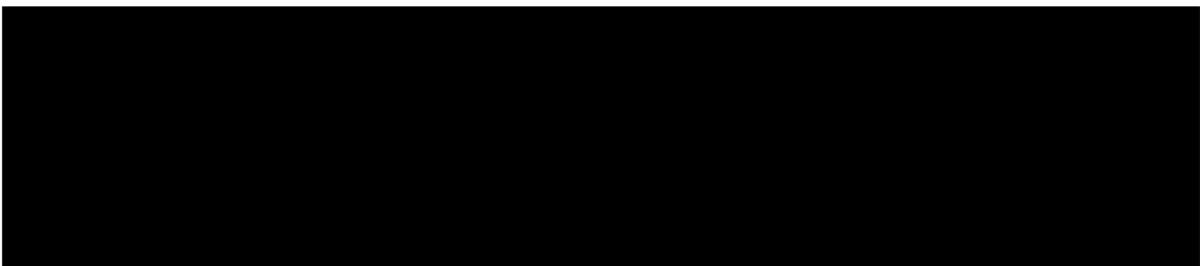


From: [REDACTED]
To: [Walsh, Kathryn E.](#); [Berg, Karen E.](#); [Carson, Timothy](#); [Sheinberg, Samuel I.](#); [Six, Anne](#); [Musick, Vesselina](#)
Subject: FW: HSR question
Date: Friday, April 10, 2020 10:34:24 AM

From: Whitehead, Nora
Sent: Friday, April 10, 2020 10:34:11 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: HSR question

We agree with your analysis. If the buyer knows now that it intends to exercise the option, then it should file now for the whole thing.



From: [REDACTED]
Sent: Friday, April 10, 2020 9:28:59 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: HSR question

Hi PNO group. I hope everyone is doing okay. I am working on a new transaction have a question about aggregation of voting securities. I think I know the answer but would like to confirm.

The target company (the "Target") is a corporation where 100% of the Target's voting securities are owned by one individual ("Owner"). Our client (a corporation) ("Buyer") is contemplating a transaction with Owner whereby Buyer would purchase 33% of the Target's voting securities directly from Owner, with an option to purchase up to the remaining 67% of the securities from Owner within 24 months following the initial closing date. The purchase price for the 33% of Owner's voting securities would be less than \$94,000,000, but if Buyer exercises its purchase option to acquire the remaining 67% of the Target's voting securities from Owner, then the aggregated purchase price would be in excess of \$94,000,000 and Buyer would also acquire "control" of the Target under the HSR rules.

It seems to me that the acquisition of 33% of Target's voting securities is not reportable because the transaction does not meet the size of transaction test. However, if the Buyer subsequently exercises the option to acquire the remaining securities from Owner, the transaction would be reportable under the aggregation rules. As ABA Interpretation 22 states, "A nonreportable acquisition of less than 50% of the voting securities of an acquired person must be aggregated with a subsequent acquisition of voting securities from the same acquired person to determine if the size of transaction

test is met.”

Please let me know if you agree with this analysis. Thanks as always for your guidance.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]