

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Monday, September 14, 2020 12:58 PM
To: Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Question Regarding Continuum Principle

From: Walsh, Kathryn E.
Sent: Monday, September 14, 2020 12:58:11 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Question Regarding Continuum Principle

[Agree with your take.](#)

From: [REDACTED]
Sent: Friday, September 11, 2020 4:51:52 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: Question Regarding Continuum Principle

Good afternoon,

We have a question about whether a restructuring prior to an acquisition would require a separate HSR filing. Here are the relevant facts:

Fund I, Fund II, and Fund III each holds minority interests in Company X. While the sum of the Company X holdings of the three funds would constitute a majority stake of the Company, because each of Fund I, Fund II, and Fund III is its own ultimate parent entity, Company X currently is its own UPE. A newly created fund, New Fund, plans to acquire all of Company X interests from Fund I, Fund II, and Fund III. Thus, New Fund will become the UPE of Company X. This acquisition of Company X is HSR reportable.

As an alternative to the direct acquisition of Company X Interests by New Fund, the parties are contemplating (for tax reasons) a restructuring that would serve as an intermediate step. Fund I, Fund II, and Fund II will create a new holding company, HoldCo LLC, which will be its own UPE, and those funds will contribute their respective shares of Company X to HoldCo LLC in exchange for interests in HoldCo LLC (the "restructuring"). The minority acquisitions of HoldCo LLC interests by the funds will not be HSR reportable. New Fund would then acquire all the HoldCo LLC interests from Fund I,

Fund II, and Fund III. In this alternative scenario, New Fund would still become the UPE of Company X and will need to file HSR for the acquisition of Company X.

The question is whether there would be an additional, second HSR filing needed for the intermediate acquisition of Company X by HoldCo LLC.

1. HoldCo LLC will not hold any other non-exempt assets other than the shares of Company X;
2. the acquisition of HoldCo LLC interests by New Fund will happen shortly (at most within a few days) after the restructuring;
3. the restructuring is dependent on New Fund acquiring the HoldCo LLC interests (the restructuring would be unwound if New Fund does not acquire the HoldCo LLC interests); and
4. New Fund's acquisition of control of Company X is HSR reportable.

Based on the continuum principle, we believe that only one HSR filing is required here. Do you agree?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]