

Sheinberg, Samuel I.

From: HSRHelp
Sent: Monday, May 16, 2022 4:18 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: 4(c) and 4(d) Document Search Timeline

From: Musick, Vesselina <vmusick@ftc.gov>
Sent: Monday, May 16, 2022 4:17:59 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: 4(c) and 4(d) Document Search Timeline

[REDACTED]

As you and your client are in possession of all the facts related to the original transaction and any subsequent discussions about the options exercise, you must determine the appropriate timeframe for the document search in order to ensure that the response to Item 4c/d in the notification that will be submitted is complete and complies with the specifications.

Kind regards.

Vesselina Musick

Attorney | Federal Trade Commission | Premerger Notification Office
Direct +1 202.326.2307 | Email: vmusick@ftc.gov | www.ftc.gov

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Saturday, May 14, 2022 9:34 AM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>
Subject: FW: 4(c) and 4(d) Document Search Timeline

From: [REDACTED]
Sent: Saturday, May 14, 2022 9:33:44 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: 4(c) and 4(d) Document Search Timeline

Dear HSR Help:

We hope this finds you all well. We have a question in a pending pharma deal for which there will be a forthcoming filing. The original transaction, in 2019, did not require a filing, but, it include the possibility of an option to be exercised subsequently. Notice of intent to exercise the option, on a slightly amended basis, was given in April 2022, and the parties are now working to close that exercise, and a required HSR filing is a part of that work.

For 4(c), 4(d) and other purposes, is our search period calculated back from April 2022 to April 2021, or, do we need to also look at the issue in the year prior to the 2019 original option agreement? Given the nature of the transaction and the possibility that there never would be an exercise, we believe the former timeline is relevant, that is April 2021 – April 2022, in terms of assessing the 4(c) and 4(d) issues in the context of the deal being considered, i.e., whether generally speaking, the option should be exercised (on the buyer side) and what the consequences would be of accepting the exercise (on the seller side). In other words, the buyer had originally made an investment in the seller that did not require a filing but which allowed the seller to continue to fund research into a drug therapy which, depending on outcomes, might cause the buyer to exercise the option to purchase the company, etc. The time period involved (2019 – 2022) was clearly affected by COVID-19 issues and the attendant delay in research activities, etc., hence the question posed.

Your reaction our assessment would be most appreciated. Thank you.

