

Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, May 17, 2023 5:02 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: HSR Question

From: Musick, Vesselina <vmusick@ftc.gov>
Sent: Wednesday, May 17, 2023 5:02:20 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>; [REDACTED]
Subject: RE: HSR Question

CONTROLLED

We agree. Please reference each filing in the other and provide an explanation of the circumstances similar to the one in the email.

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: Wednesday, May 17, 2023 11:49 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: HSR Question

From: [REDACTED]
Sent: Wednesday, May 17, 2023 11:48:44 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: HSR Question

Dear PNO Team:

We have two transactions involving the same acquiring and acquired persons, that are related but not occurring (closing) on the same day. One transaction involves the acquisition by Company B of certain assets of Company A for a value in excess of \$100 million (as adjusted) to close on Day 1 ("Assets Acquisition"). The second transaction involves the acquisition by Company B of 100% of Company's A equity ("Equity Acquisition") for in excess of \$100 million (as adjusted) but the merger agreement in connection with Equity Acquisition provides that the Equity Acquisition will not close until at least two business days after the Assets Acquisition. While the Asset Acquisition is conditioned upon (among others) all of the conditions to the Equity Acquisition having been satisfied or waived or being capable of being timely satisfied at the closing of the Equity Acquisition, events may transpire or circumstances may arise between the closing of the Asset Acquisition and the expected closing of the Equity Acquisition such that the Equity Acquisition is never consummated. The parties have agreed that if the Assets Acquisition is consummated but the merger agreement providing for the Equity Acquisition is subsequently terminated, Company A will pay a break fee to Company B. The Equity Acquisition is a cash tender offer. We do not believe this situation falls under the definition of "continuum" because the Assets Acquisition is not an intermediate step in a series of transactions that all happen at the same closing

or on the same day. Accordingly, we believe both transactions are separately reportable and we would file two Notification and Report Forms at the same time and pay two filing fees based on the value of each separate transaction. Please let us know if you disagree or have any questions.
Thank you.

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[REDACTED]

[REDACTED]

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