

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Friday, October 18, 2024 12:08 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter  
**Subject:** FW: Question Re: Valuation and Aggregation of Privately-Held Voting Securities

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Friday, October 18, 2024 12:07:34 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Question Re: Valuation and Aggregation of Privately-Held Voting Securities

[REDACTED]  
Yes, all three categories must be included in the size of transaction. Please see [Rule 801.10](#) to determine valuation.

Best regards,

Kristin

**Kristin Shaffer**

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | [kshaffer@ftc.gov](mailto:kshaffer@ftc.gov)

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**From:** [REDACTED]  
**Sent:** Thursday, October 17, 2024 7:36:28 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Cc:** [REDACTED]  
**Subject:** Question Re: Valuation and Aggregation of Privately-Held Voting Securities

Dear PNO:

I hope this inquiry finds you well.

We represent Issuer A with respect to an acquisition of additional privately-held voting securities by current Stockholder A.

I want to make sure I correctly understand both the aggregation and valuation rules for purposes of the reportability analysis, particularly with respect to previously-acquired "Convertible Voting Securities" that will convert to "Voting Securities" (within the meaning of the HSR Act) at closing.

- Stockholder A currently holds a non-controlling share of Common Stock. The Common Stock carries a present right to vote at one vote per share.
- Stockholder A will acquire additional shares of Preferred Stock as part of the proposed transaction. The Preferred Stock will carry a present right to vote at one vote per share.
- Stockholder A also currently holds Convertible Notes. The Convertible Notes do not carry a present right to vote so meet the definition of "Convertible Voting Securities" under the HSR Act. While the Convertible Notes do not presently carry the right to vote, the Convertible Notes will convert at close. Once converted, the Convertible Notes will carry a right to vote at one vote per share.

For purposes of determining whether the "size of transaction" threshold is met, can you confirm that:

- The previously-acquired Common Stock will be valued at FMV;
- The to-be-acquired Preferred Stock will be valued at the Acquisition Price (it is determined); and
- The Convertible Notes (because they will be converted into voting securities at close) must be included in the "size of transaction" calculation and valued at FMV.

If the Convertible Notes are not included or valued in some other manner for purposes of determining reportability, please let us know.

Thanks so much,

[Redacted signature block]

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