

Sheinberg, Samuel I.

From: HSRHelp
Sent: Monday, January 13, 2025 4:28 PM
To: HSR Auto Forward List
Subject: FW: HSR size-of-transaction inquiry

From: Shaffer, Kristin
Sent: Monday, January 13, 2025 4:28:16 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp
Subject: RE: HSR size-of-transaction inquiry

[REDACTED]
Thank you for your patience. Based upon the information provided, we agree with your first two bullets. For bullet three, we agree that a fair market valuation should be done but it should take into account the business reality that those shares are tied to the units of the LLC.

Best regards,
Kristin

Kristin Shaffer

Attorney
Premerger Notification Office
Federal Trade Commission
202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Monday, January 13, 2025 12:25 PM
To: HSRHelp
Subject: RE: HSR size-of-transaction inquiry

Hi HSR Help. I know that you all have been very busy and there was an intervening holiday, but just checking back on the PNO's thoughts on my inquiry below. Thanks,

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Wednesday, January 8, 2025 10:31 AM
To: 'HSRHelp'
Subject: HSR size-of-transaction inquiry

Dear HSR Help: Please let me know if you agree with the following size-of-transaction analysis for an acquiring person with different equity interests in an "Up-C" corporate structure.

Publicly traded “Up-C” corporation (PubCo) holds more than 50% OpCo LP (the “Partnership”) equity. PubCo equity consists of Class A Common Stock (publicly traded) and Class B Common Stock (5x vote, not traded, no economic interest beyond par value of \$0.10). Each holder of Class B Common Stock also holds one Partnership Class B Unit (Class B Unit) for each Class B Common Stock share held.

Pursuant to Exchange Agreements among the PubCo, Partnership, and the Class B Common Stock/Class B Unit holders, each Class B Unit holder has the right to surrender a Class B Unit to the Partnership, together with the surrender of one share of Class B Common Stock to PubCo, in exchange for the issuance of one fully paid and nonassessable share of Class A Common Stock and the par value of the Class B Common Stock. The Class B Common Stock and Class B Units must be exchanged or conveyed (to certain allowed transferees) together. An officer of PubCo will receive Class A Common Stock through vesting of RSUs. The issue is how to value his holdings for size-of-transaction purposes.

- Class A Common Stock is valued at the market price or the acquisition price, whichever is greater.
- Class B Units held by the officer comprise a minority position in an LLC. As such, the value of the Class B Units is not aggregated with the value of the Class A Common Stock and Class B Common Stock. See Scenario 3, <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/when-aggregate-under-hsr-act>. Although the Class B Units may be considered convertible voting securities, their value is not aggregated per 801.15/802.31.
- The value of the Class B Common Stock is the fair market value of such shares alone and independent of the value of the corresponding number of Class B Units held by the individual, even though they must be conveyed or exchanged together by virtue of the Exchange Agreements, because they are technically separate interests in different entities.

Please let me know if you agree with the foregoing analysis or have any additional questions.

Thank you,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
