

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, April 16, 2024 10:43 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Request for Informal Interpretation

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Tuesday, April 16, 2024 10:42:34 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Request for Informal Interpretation

[REDACTED]

Because Person A has the power to remove and replace the trustees of the two trusts, she has control of both trusts. Additionally, the holdings of married couples and their minor children are all part of the same “person” for HSR purposes. Therefore, the holdings of the two trusts must be aggregated, along with the holdings of Person A’s husband. As a result, Person A and Person B are both the (singular) UPE of Corporate Parent and Acquired Entity.

Best regards,
Kristin

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

From: [REDACTED]
Sent: Monday, April 15, 2024 2:47:53 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Request for Informal Interpretation

Dear PNO Staff:

This firm represents the Acquiring Entity in a transaction that will require HSR Premerger Notification. I write to request interpretive guidance regarding the Ultimate Parent Entity or Entities of the Acquired Entity.

Factual Background

Acquiring Entity intends to acquire the outstanding voting securities of Acquired Entity, a corporation, through an equity purchase agreement. Acquired Entity is a wholly-owned subsidiary of a Delaware corporation (“Corporate Parent”). The voting securities of Corporate Parent are held by fifteen persons and two irrevocable trusts. None of the persons or trusts individually hold 50% or more of Corporate Parent’s voting securities. Other than Corporate Parent’s bylaws confirming that the shareholders have the power to designate the board of directors in proportion to their ownership interests, which, again, do not exceed 50% individually, there is no separate contractual agreement that gives any of the persons or trusts the contractual power to designate 50% or more of Corporate Parent’s board of directors and we therefore assume that this portion of the corporate control test is inapplicable.

A single individual (“Person A”), however, is both the trustee for and beneficiary of the two irrevocable trusts. Together, the two irrevocable trusts’ ownership interests in Corporate Parent exceed 70%. While Person A does not separately hold an individual ownership interest in Corporate Parent, her husband (“Person B”) holds an additional approximately

7% ownership interest. Person A has the power to name her successor trustee and to remove a corporate trustee for both irrevocable trusts.

Questions

Question 1: Should the two irrevocable trust ownership interests of Corporate Parent, which exceed 50% in the aggregate, be aggregated such that Corporate Parent is not the UPE of Acquired Entity?

Question 2: If the answer to Question 1 is "yes," then is Person A's power to name her successor trustee and remove a corporate trustee sufficient "control" over the two irrevocable trusts such that Person A is the (or a) UPE of the Acquired Entity instead of the two irrevocable trusts?

Question 3: If the answer to Question 2 is "yes," then should Person A's aggregated ownership interest, through the two irrevocable trusts, also be aggregated with the individual ownership interest of her husband, Person B, such that both Person A and Person B are the Acquired Entity's UPEs?

Thank you. If you need any additional facts or clarifications, please do not hesitate to contact me.

[Redacted]

[Redacted]

[Redacted]
