

Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, May 17, 2024 2:05 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: HSR Inquiry - 802.21/802.30

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Friday, May 17, 2024 2:05:16 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: HSR Inquiry - 802.21/802.30

[REDACTED]

[REDACTED]

Assuming the instrumentality analysis is correct, we agree.

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

From: [REDACTED]
Sent: Thursday, May 16, 2024 9:38:00 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: HSR Inquiry - 802.21/802.30

Dear PNO:

I write to confirm my analysis of an upcoming acquisition of voting securities. Company A has two classes of voting securities: Class 1, which entitles holders to one vote per share, and Class 2, which entitles holders to twenty votes per share. Historically, the majority of Class 2 shares have been held by Investor A and the CEO of Company A, and neither Investor A nor the CEO held 50% or greater of Company A's voting securities.

Last week, Company A received notice that Investor A unilaterally elected to convert a substantial majority of the Class 2 shares it holds into Class 1 shares, which it then sold. Company A had no prior notice of or involvement in the decision by Investor A to convert its Class 2 shares into Class 1 shares.

As a result of Investor A converting the Class 2 shares it held, the CEO's voting percentage in Company A increased to over 50%. Accordingly, today, the CEO is the ultimate parent entity of Company A.

The CEO will have restricted stock unit awards vest next week and will, as a result, acquire additional Company A voting securities. Within the past 5 years, the CEO filed an HSR notification at the \$500 million HSR threshold in 801.1(h), meaning that, pursuant to 802.21, the CEO would have to file HSR again in order to make an acquisition that would increase his/her holdings to meet or exceed the 50% threshold.

I wanted to confirm my analysis as to the events described above:

1. The event that caused the CEO's voting percentage to increase above 50% was Investor A's decision to convert its Class 2 shares. So long as the CEO was not instrumental in causing Investor A to convert the shares, the CEO did not have an obligation to submit an HSR filing to report the increase in voting percentage above 50%.
2. Today, the CEO is the ultimate parent entity of Company A. This means that the receipt of Company A voting securities through the vesting of restricted stock units next week is exempt as an intraperson transaction under 802.30 and an HSR filing is not required.
3. If, in the future, the CEO's voting percentage of Company A dips below 50% because he/she converts or sells Company A voting securities, the CEO would need to submit an HSR filing and indicate the 50% threshold before he/she could acquire additional voting securities that would take his/her voting percentage above the 50% threshold again.

I appreciate your confirmation on the analysis above. Please let me know if you have any questions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]