

Sheinberg, Samuel I.

From: HSRHelp
Sent: Monday, June 24, 2024 11:40 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Request for informal interpretation re filing by anticipated UPE

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Monday, June 24, 2024 11:40:02 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Request for informal interpretation re filing by anticipated UPE

Based on what you describe, a filer could not properly certify the contents of Item 6(b).

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Monday, June 24, 2024 10:56 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>; Burton, June <jburton@ftc.gov>; Larson, Peter <plarson@ftc.gov>
Subject: FW: Request for informal interpretation re filing by anticipated UPE

From: [REDACTED]
Sent: Monday, June 24, 2024 10:55:38 AM (UTC-05:00) Eastern Time (US & Canada)
To: Whitehead, Nora <nwhitehead@ftc.gov>
Cc: [REDACTED]
[REDACTED] Request for informal interpretation re filing by anticipated UPE

Many thanks Nora.

As follow up, could I ask what factor leads you to conclude that it is too early to properly certify an HSR filing? Is it because of the impending IPO?

If the IPO is the factor, we believe an officer of the Fund could certify the Fund's good faith intent to proceed with an acquisition, and an 801.30 notice letter would have gone to the issuer in advance of any filing announcing that intent. We believe many transactions file for HSR even when the debt or equity issuance that will be used to finance the acquisition has not yet been secured (and indeed may be less certain than the Fund's planned IPO here).

If another factor, we may be able to take steps to address that as well.

Thanks as always for your thinking about this.

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Monday, June 24, 2024 10:29 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: [EXTERNAL] RE: Request for informal interpretation re filing by anticipated UPE

[REDACTED]

Based on the facts described, it is too early to properly certify an HSR filing for any anticipated acquisition.

From: HSRHelp <HSRHelp@ftc.gov>

Sent: Friday, June 21, 2024 1:56 PM

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>; Burton, June <jburton@ftc.gov>; Larson, Peter <plarson@ftc.gov>

Subject: FW: Request for informal interpretation re filing by anticipated UPE

From: [REDACTED]

Sent: Friday, June 21, 2024 1:56:03 PM (UTC-05:00) Eastern Time (US & Canada)

To: HSRHelp <HSRHelp@ftc.gov>

Cc: [REDACTED]

Subject: Request for informal interpretation re filing by anticipated UPE

Dear all –

We are writing to confirm that we can appropriately file an HSR now on behalf of an acquiring person that will be its own UPE prior to consummating any of its planned acquisitions, even though as of today it is controlled by another entity.

Our client is a Delaware statutory trust (a “Fund”) that is a newly-organized, non-diversified, closed-end management investment company registered under the Investment Company Act of 1940, as amended. The Fund anticipates that it will acquire equity positions in a number of different publicly-traded issuers. In anticipation of doing so, the Fund would like to initiate the HSR process now as to one or more issuers.

As of today, as a newly-formed entity, the Fund is wholly-owned by Limited Partnership A. However, by the time the Fund makes any acquisition that may be subject to the anticipated HSR filings, the Fund will be its own UPE. That is because in order to proceed with the contemplated acquisitions, the Fund needs to raise capital, which it is doing principally by way of an SEC-registered offering of common shares to the public (“IPO”); and Limited Partnership A has unrelated contractual obligations to third parties to limit its investment in the IPO to 4.9% of the Fund. Therefore, Limited Partnership A will be diluted to 4.9% (or less) of the Fund as a result of the Fund’s sale of shares in the IPO. Upon completion of the IPO, no person is expected to control the Fund for HSR purposes, so it will become its own UPE.

In these circumstances, can the Fund appropriately proceed now with HSR filings as the acquiring person UPE? Because of the uncertainties of the IPO process, our response to HSR Item 6(b) would be unknown because we do not know at this time who, if anyone, may hold a 5% or greater minority position in the Fund. Otherwise, we believe the remainder of the HSR form would be identical to what it would be if the Fund already were its own UPE. (We also understand that a risk of proceeding in this way is that in the extraordinarily unlikely event that the IPO process does not result in the Fund becoming its own UPE, the HSRs that will have been filed by the Fund will not cover a different UPE that is not subsumed within the Fund.)

Thanks very much,

[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]