
HSRHelp

Wednesday, December 14, 2022 2:07 PM

Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora

FW: Consolidation vs series of acquisitions

From: Fetterman, Michelle <mfetterman@ftc.gov>

Sent: Wednesday, December 14, 2022 2:07:20 PM (UTC-05:00) Eastern Time (US & Canada)

To: [REDACTED]

Cc: HSRHelp <HSRHelp@ftc.gov>

Subject: RE: Consolidation vs series of acquisitions

The transaction that you've described should be reported as a series of acquisitions.

From: [REDACTED]

Sent: Wednesday, December 14, 2022 11:33:28 AM (UTC-05:00) Eastern Time (US & Canada)

To: HSRHelp <HSRHelp@ftc.gov>

Subject: Consolidation vs series of acquisitions

Dear All:

We are looking at a proposed, fileable transaction and would very much appreciate your guidance on whether you agree that it should be treated as a consolidation or a series of acquisitions.

Relevant Entities

Fund A, Fund B and Fund C (the "Funds") are three funds in the same family, and each is its own UPE.

Fund C is a newly-formed Continuation Vehicle ("CV"), whose purpose is to acquire and hold operating entities currently owned by associated Funds A and B, who have reached the end of their investment period.

OpCos X1, X2 and X3, each of which is a partnership, are controlled by Fund A.

OpCo Y, a partnership, is controlled by Fund B.

All existing investors in Funds A and B will receive cash distributions from Funds A and B in relation to the value of the OpCos being sold to CV, and some will then invest that cash in the CV ("Rolling Investors") and receive interests in CV. There are also new investors who will invest cash in the CV.

All existing investors in Funds A and B will remain investors to some extent post-transaction (in respect of other portfolio companies that continue to be held by each fund).

Transaction Structure

Funds A and B, and CV are each signatories to the purchase agreement. None of the OpCos is a signatory to the purchase agreement.

Step 1: CV is formed as a new partnership.

Step 2: Funds A sells all of its interests in OnCos X1-3 to CV in exchange for cash, and CV continues to exist, and holds other investments that will be sold in the course of a 9-month period.

Step 3: Funds B sells all of its interests in OnCo Y to CV in exchange for cash, and CV continues to exist, and holds other investments that will be sold in the course of a 9-month period.

Post-closing, all of OnCos X1-3 and OnCo Y are wholly-owned subsidiaries of CV.

HSR Analysis

Rule 801.101(b) provides that acquisitions of interests in entities that were previously wholly-owned subsidiaries of a newly formed entity shall be treated as acquisitions of interests in the newly formed entity... and acquired entities consolidating into any newly formed entity...

We note that Funds A and B are not parties to the transaction other than as sellers. The transaction appears to be an acquisition because post-closing, OnCos X1-3 and OnCo Y will be wholly-owned subsidiaries of newly-formed CV, which is a newly formed UPE. Do you agree?

Best regards,

[Redacted signature]

[Redacted signature]