

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, December 14, 2023 12:14 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 § 802.4

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Thursday, December 14, 2023 12:13:51 PM (UTC-05:00) EJT@H e .o(eo]TJ ET q 1e<</MC.t /TT1 Tf -0.000 T:7 (14, 25:12
To: [REDACTED] HSRHelp <HSRHelp@ftc.gov>
Cc: HSRHelp <HSRHelp@ftc.gov> Cc:
Subject: HSR § 802.4

Deal All,

We're working on a transaction for a client and would like to confirm with you that the transaction is exempt from the requirements of the HSR Act under § 802.4.

Factual Background

The client, an investment vehicle controlled by an individual ("Investor"), intends to invest in excess of \$445.5 million in cash in a publicly traded corporation ("Target"), along with other investors ("Minority Investors") who are expected to invest, in the aggregate, less than \$1 million. Investor will receive voting securities of Target valued in excess of \$445.5 million, as well as warrants. Upon the closing of the investment, Investor will become the majority shareholder of Target. Under the investment agreement, Investor has the right to

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Shortly after the closing of the investment (Closing), Target will spin-off all of its existing busi
and assets to the shareholders of Target as of a record date that is expected to be one day prior to the Closing
(the Investment Shareholders). As a result of the spin-off, all of the pre-closing assets and liabilities will be
owned by a new company ("SpinCo") entirely owned by the Investment Shareholders. Investor will not own
any voting securities or other interests in SpinCo. Hereafter, after the Closing as a result of the spin-off, Investor will
own the majority of the voting securities of a new entity which will be the only asset which will be the cash investment made by Investor
and the Minority Investment Shareholders. All other contributed assets that Investor may contribute to Target (in
lieu of cash).

Analysis

While the spin-off will occur shortly after the Closing, we believe that the substance of the transaction is that
Investor will acquire voting securities valued at more than \$100,000 in exchange for cash (and, potentially, any Contributed Assets). Therefore, if applicable, the acquisition of Contributed Assets would be exempt under § 802.4. Therefore, pursuant to § 802.4, Investor's acquisition of voting securities of Target is exempt from the HSR Act.
Under a more formalistic analysis, one could take the view that, since the spin-off will occur shortly after the
Closing, at the Closing, and for a very short period thereafter, Investor will control Target with its
Closing assets. Even under this approach, we think the transaction is exempt under § 802.4. Target currently
has a total market capitalization of substantially less than \$111.4 million, which Investor does not
exceed market value for all of Target's existing assets. About two-thirds of the market value of Target's existing
cash and cash equivalents, the acquired assets, and the non-exempt assets is therefore substantially less than \$111.4 million. As a result, since
Target's total market value is less than \$111.4 million, the value of the contributed assets is less than \$111.4 million. Therefore, the value of
Investor's investment in Target, if in excess of \$445,000, is less than \$111.4 million. Therefore, the value of the contributed
Target's existing assets, as it cannot be considered in the price that Investor will pay for Target's existing
assets, given that such assets will be entirely spun off shortly after the Closing of the investment.

Question

We would be grateful if you could please confirm that you agree that Investor's investment in Target, as
described above, is exempt for the reasons stated above.
Many thanks and best regards,

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