Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, January 3, 2024 4:04 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: Reportability Question [IWOV-MS1.FID660826]

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Wednesday, January 3, 2024 4:03:57 PM (UTC-05:00) Eastern Time (US & Canada)
To: [redacted]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Reportability Question [IWOV-MS1.FID660826]

[redacted]

You should only value the voting securities and it appears you have determined that a fair market value of the voting securities must made pursuant to 801.10. The board of directors of the acquiring UPE (or its delegee) must make this determination on a commercially reasonable basis and in good faith. While the PNO does not require or endorse an particular methodology, factors such as ordinary course documents discussing valuation and what a third party would pay for just the voting securities, without the acquisition of the non-voting securities (or just the non-voting securities, without the acquisition of the voting securities) may be relevant to the determination.

Best regards,

Kristin

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From: [redacted]
Sent: Wednesday, December 27, 2023 8:22:52 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [redacted]
Subject: Reportability Question [IWOV-MS1.FID660826]

Submitted for your consideration. Thanks in advance for your assistance.

Assume that an S Corporation has two classes of stock. The only difference between the two classes of stock is that one class has voting rights and the other has no voting rights. The S Corporation has two shareholders. One shareholder is an individual that owns 5 shares of voting stock. The other shareholder is a trust that qualifies as a “person” for HSR purposes. The trust owns 95 shares of nonvoting stock. These 100 shares of stock are the only securities issued by the S Corporation.

The shareholders are selling all 100 shares of stock of the S Corporation to an unrelated third party for $150,000,000.

The S Corporation is the acquired person and the individual shareholder is the UPE of the acquired person because that individual shareholder owns all of the issued voting stock of the S Corporation.

In determining whether the size of transaction test is met for this transaction, do the parties value (1) only the 5 shares of voting stock being transferred by the UPE of the acquired person or (2) all 100 shares of stock (which would include the 95 nonvoting shares held by the other shareholder)? If valuing only the 5 shares of voting stock, that value would likely be well below the current $111.4 million threshold and, therefore, not a reportable transaction. If valuing all 100 shares of stock, that value would likely be the $150,000,000 purchase price and, therefore, a reportable transaction.