

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Thursday, March 01, 2018 10:22 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora; Davis, Alpa D.
Subject: FW: Valuation Question

From: Carson, Timothy
Sent: Thursday, March 1, 2018 10:21:34 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Valuation Question

[REDACTED]

If the size of transaction is below the size-of-transaction threshold, the parties may withdraw their filings, and then close without violating the HSR Act. To be clear, the filings must be withdrawn if the parties will close prior to the expiration (or early termination) of the waiting period.

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From: [REDACTED]
Sent: Tuesday, February 27, 2018 7:57:50 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Valuation Question

Dear PNO Team,

Hopefully a quick hypothetical.

Background: In an acquisition of all outstanding voting securities, the purchase price is undetermined because the purchaser cannot make a reasonable estimate of a purchase price adjustment, so the purchaser performs a FMV determination, which results in a value slightly above the lower threshold (\$50 million, as adjusted). Assuming also that the parties meet the size of person test, the parties will file an HSR notification and report form.

Question: If, before the expiration of the waiting period, the purchase price adjustment is made resulting in a determined purchase price at a value below the lower threshold, we would like to confirm with the PNO that this subsequent post-filing determined purchase price: (1) makes the transaction non-reportable despite the earlier FMV determination over the lower threshold that was the basis for filing; and, (2) allows the parties to withdraw the HSR filing and immediately close.

A similar situation appears to be permitted in the case of publicly traded voting securities that drop in value after filing, but we have not found support for a similar position for voting securities initially valued with a FMV determination because the purchase price is undetermined. (See e.g., [Informal 0202009](#), PNO stating that "[i]f a filing is made and the market price drops during the waiting period such that the value is now \$50MM or less, the parties may close without observing the remainder of the waiting period, but the filing fee would not be refunded since the transaction was reportable on its face at the time the filing was made.")

Please let me know if you have any questions. Many thanks for your attention.

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]