

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Friday, June 29, 2018 11:46 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Whitehead, Nora; Cummings, Stephanie
Subject: FW: Question regarding acquiring and acquired persons

From: Shaffer, Kristin
Sent: Friday, June 29, 2018 11:45:36 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Question regarding acquiring and acquired persons

[REDACTED]

We view this as an acquisition of B by A with backside acquisitions of A by the B shareholders. Since the agreement is signed by both A and B, it should not be treated as an 801.30 transaction.

Best regards,
Kristin

Kristin Shaffer

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From: [REDACTED]
Sent: Thursday, June 28, 2018 1:04 PM
To: [REDACTED]
Subject: Question regarding acquiring and acquired persons

Assume that a reportable transaction is to take place in the following sequence:

Step 1: In a stock-for-stock transaction, Company B will merge with a wholly-owned subsidiary of Company A, with Company B surviving as a wholly-owned subsidiary of Company A. Former shareholders of Company B will become shareholders of Company A.

Step 2: Immediately following step 1, Company B merges with Company A, with Company A surviving.

Can you confirm that the HSR filing should be made with Company A as the acquiring person only and Company B as the acquired person only, with respect to Step 1 (and Step 2 is exempt under 802.30)?

Also, if both Company A and Company B are publicly-traded companies, but each is party to the merger agreement, would this be considered an 801.30 transaction?

