

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, December 21, 2021 2:28 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora
Subject: FW: Question Regarding Determining the Size of Transaction

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Tuesday, December 21, 2021 2:27:40 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Question Regarding Determining the Size of Transaction

[REDACTED]
Yes, since the cash that remains will be consideration for the sellers, it should be included in the size of transaction.

Best regards,

Kristin

Kristin Shaffer

Attorney

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From: [REDACTED]
Sent: Tuesday, December 21, 2021 1:11 PM
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Question Regarding Determining the Size of Transaction

We are working on a transaction targeted to occur sometime during Q1 of 2022. The expected structure of the transactions is as follows: Company A will purchase all of the non-corporate interest of Company B on a cash free/debt free basis. The cash held by Company B prior to the transaction will remain in Company B after the transaction but the amount of such cash will increase the net proceeds to the selling company. We understand that for asset purchases, pursuant to Rule 801.21, "[c]ash shall not be considered an asset of the person from which it is acquired." However, we have the following question:

For an acquisition of non-corporate interests, in determining whether the size of transaction threshold is met, should the cash that remains in Company B (the acquired company) resulting in an increase in closing proceeds to be disbursed to the seller at closing be included in the acquisition price?

All the best,

[REDACTED]

[REDACTED]

