Sheinberg, Samuel I.

From: ████████

Sent: Thursday, May 13, 2021 12:42 PM

To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora

Subject: FW: 802.51 Question

From: Musick, Vesselina <vmusick@ftc.gov>

Sent: Thursday, May 13, 2021 12:41:35 PM (UTC-05:00) Eastern Time (US & Canada)

To: ██

Cc: ████████████████████████████

Subject: RE: 802.51 Question

CUI

You have to look at assets/sales of the acquired and acquiring person at closing. If you think there is a credible chance that the exemption will not apply by closing, you should file to be safe or prepare to delay the closing.

From: ████████████████████████████

Sent: Tuesday, May 11, 2021 3:05:28 PM (UTC-05:00) Eastern Time (US & Canada)

To: HSRHelp <HSRHelp@ftc.gov>

Cc: ████████████████████████████████

Subject: 802.51 Question

Dear PNO Staff,

I hope you are all keeping well. I have a question about 802.51 that I hope you can clarify for us. For purposes of analyzing whether the exemption under 16 CFR 802.51(c) applies to a potential transaction, we understand that the Acquiring and Acquired Persons should look at the U.S. assets and U.S. sales for the most recent fiscal year to determine whether the requisite thresholds of 802.51(c)(2) and 802.51(c)(3) are met. (See Informal Interpretation 1312007).

However, do we look at the parties (1) at the time they execute the agreement for the proposed transaction; or (2) at the time the proposed transaction actually closes?

Our question is whether the parties must take into account any U.S. assets, or U.S. sales derived from any additional entities, that are acquired between signing and closing of the subject transaction for which the 802.51(c) exemption analysis is being applied.

We would think that for the 802.51 exemption analysis, we would look at the parties going into the transaction. To look at the parties at the time of closing would cause a deal of uncertainty, as other pending transactions for the Acquired and Acquiring Persons may not necessarily close when they are expected to, rendering the 802.51 analysis unreliable at any given time before the subject transaction can actually close.

Would you agree with our analysis?

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