

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, August 5, 2021 12:17 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Transaction Involving Multiple UPE's

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Thursday, August 5, 2021 12:16:32 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Transaction Involving Multiple UPE's

[REDACTED]

The parties must assess how many Acquired Persons there are. For HSR purposes, the Acquiring Person will have a separate transaction with each Acquired Person and each must be evaluated separately for potential reportability. If the Acquiring Person and at least one Acquired Person for a particular target is the same by reason of Rule 801.1(b)(1), that transaction would be exempt pursuant to Rule 802.30.

Best regards,

Kristin

Kristin Shaffer

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From: [REDACTED]
Sent: Wednesday, August 4, 2021 5:59 PM
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Transaction Involving Multiple UPE's
Good Afternoon PNO Staff,

We represent the sellers in a transaction involving the sale of membership interests and assets by multiple sellers to the same purchaser. Specifically, this transaction involves the sale of 50% of the NCI of Target A ("Target A"), and the sale of assets from three different entities ("Target B," "Target C" and "Target D"). I am seeking some guidance as to how many filings would be required in this transaction since it involves multiple UPE's, as explained below (assuming the size of transaction and size of person thresholds are met).

Target A is owned 50/50 by Parent 1 and Parent 2 (Parent 1 is buying out its 50% partner so that Parent 1 will hold 100% of the NCI as a result of the transaction). Because both Parent 1 and Parent 2 each own 50% of the NCI of Target A, both Parent 1 and Parent 2 control Target A. Parent 2 is not controlled by any other entity, so Parent 2 is a UPE of Target A. I am currently unsure as to whether Parent 1 is controlled by any other entity since Parent 1 is encompassed within the Acquiring Person and we do not represent the Acquiring Person. However, since Parent 1 is already a holder of 50% of the NCI of Target A, does this implicate 15 U.S.C. § 18a(c)(3) and Rule 802.30 which exempts acquisitions of additional voting securities by persons who already hold 50% of the voting shares of an issuer? If so, does this portion of the transaction simply get removed from the HSR analysis (i.e. it does not count toward the total size of the transaction)? With regard to the sales of assets of Target B, Target C and Target D to the purchaser, each of Target B, Target C and Target D is not controlled by any other entity (each entity is owned equally by 4 or 5 members, and no member of these entities has the power to designate 50% or more of the Board). It therefore appears that each of Target B, Target C and Target D is its own UPE. Even if the Acquiring Person is the same for each of these sales (and these sales are encompassed within one purchase agreement), does the fact that each sale involves a different Acquired Person necessitate separate HSR analyses and potentially separate HSR filings? Some, but not all, of the sales potentially meet the size of transaction/person threshold on their own.

Please let me know if there is any additional information needed. Your thoughts and guidance are much appreciated.

Regards,

[Redacted signature block]