

Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, December 1, 2023 10:28 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: UPE Filing question

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Friday, December 1, 2023 10:27:48 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
HSRHelp <HSRHelp@ftc.gov>
Subject: RE: UPE Filing question

CONTROLLED

You may make one filing, but if Fund 1-A becomes the UPE, then you must notify the PNO via email before closing. PNO attorneys will then evaluate whether the waiting period should restart for an acquisition by Fund 1-A. If Fund 1-A consummates the acquisition without counsel notifying the PNO, then it risks closing without an accurate HSR on file (in violation of the Act).

You may also make two filings (with two fees) if you prefer.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Thursday, November 30, 2023 1:26 PM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>; Burton, June <jburton@ftc.gov>
Subject: FW: UPE Filing question

From: [REDACTED]
Sent: Thursday, November 30, 2023 1:25:25 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: UPE Filing question

All,

We have a quick question we were hoping to run by you. We represent BUYER, a private equity firm. BUYER is planning to make an acquisition of a company that is HSR reportable. There are two related and newly formed BUYER funds (FUND 1 and FUND 1-A) that will be funding the acquisition. As of the time of filing, we believe that Fund 1 will be the UPE of the acquiring entity. However, because the funding allocation is not yet confirmed (and won't be confirmed at the time of filing) it is possible that Fund 1-A will end up being the UPE. Fund 1 and Fund 1-A will have the same item 5-8 information (and the same item 4(c)/(d) information).

We are planning to make a single filing and list Fund 1 as the UPE and simply note in the transaction description that it is still possible that Fund 1-A may end up being the UPE at closing and further note that the information provided for items 5-8 is the same regardless of which entity is the listed UPE. As a result, should Fund 1-A ultimately end up being the UPE, we would thus not need to submit a new filing.

We thought this would be consistent with prior guidance and more efficient than making two separate HSR filings (one for Fund 1 and a separate filing for Fund 1-A), but wanted to confirm with you all.

Thanks,

[REDACTED]

