

Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, July 9, 2021 4:43 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Questions re Determining UPE

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Friday, July 9, 2021 4:42:30 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Questions re Determining UPE

[REDACTED]

Since Ms. A has the right to remove and replace the trustees of Trust A, she controls Trust A and all of the assets and entities within it. Therefore, Ms. A has the right to 50% of the profits of LLC-1 and is the UPE of LLC-1. As a result, Ms. A will be the Acquiring Person and the HSR filing must include information related to the holdings of Ms. A, her spouse and minor children, if any, and any entities controlled by them.

Best regards,
Kristin

Kristin Shaffer
Attorney
Premerger Notification Office
Federal Trade Commission
202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Friday, July 9, 2021 11:52:30 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Questions re Determining UPE

Hello,

I have a few questions about determining which entity is the UPE. The facts are as follows.

LLC-1 is a party to a proposed transaction pursuant to which it will acquire all of the assets of another LLC. It is owned in the following proportions:

- 40% by Ms. A (an individual)
- 10% by Trust A (an irrevocable trust)
- 15% by Mr. B (an individual)
- 15% by Ms. C (an individual)
- 20% by Mr. D (an individual)

According to its operating agreement, profits are allocated to the members in accordance with their percentage interests.

Ms. A is the sole settlor of Trust A. The instrument governing Trust A provides that Ms. A has the power to remove any trustee without cause or to fill any vacancy in office. The trust is irrevocable, and Ms. A did not retain a reversionary interest in the corpus of the trust.

According to Section 801.1(b)(1)(ii), it appears that LLC-1 is its own UPE because no one entity has the right to 50% or more of the profits. However, based on my understanding of Sections 801.1(b)(2) and 801.1(c)(8), Ms. A controls Trust A because she can remove and designate 50% or more of the trustees and is deemed to hold the assets of Trust A, which includes the 10% interest in LLC-1.

QUESTIONS:

In such circumstances, should the holdings of Ms. A (40% + 10%) be aggregated to determine whether she is the UPE of LLC-1?

For clarity, who would be considered the UPE of LLC-1, Ms. A or LLC-1?

Thanks,

