

Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, April 17, 2024 3:55 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Burton, June; Larson, Peter
Subject: FW: UPE inquiry

From: Fetterman, Michelle <mfetterman@ftc.gov>
Sent: Wednesday, April 17, 2024 3:55:09 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>; [REDACTED]
Subject: RE: UPE inquiry

[REDACTED]

Assuming a majority of the shares of the top-level entity are still considered part of the estate of the decedent, the estate would be the UPE.

Michelle Fetterman
Staff Attorney
Premerger Notification Office
Federal Trade Commission

From: [REDACTED]
Sent: Tuesday, April 16, 2024 10:21:26 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: UPE inquiry

You don't often get email from [REDACTED]

Good morning,

I hope this email finds you well. I have a reportable transaction for which we are trying to confirm the correct UPE for the acquiring person. More detail is provided below, but the basic situation is that the former UPE has passed away, and currently the majority of shares in the top-level entity are held by his heir, but all voting rights associated with those shares are controlled by the executor of the estate for the duration of the executorship.

The buyer is Company A. The voting securities of Company A are 58.99% held by a holding company, which in turn is controlled by another entity. The top-level entity was previously controlled by its former UPE, who is now deceased. Currently, an heir of the former UPE ("Individual 1") holds approximately 64% of the shares in that top-level entity. However, since the former UPE's death, the voting rights connected to those shares have been controlled by the executor of the former UPE's estate ("Executor"), and will be so controlled for the duration of the executorship. At a later point in time, the shares held by the heir will be contributed to a family trust, but this has not yet occurred and there is no information to suggest it is imminent.

In prior filings in other jurisdictions, Executor has been viewed as the ultimate parent/ultimate beneficial owner of Company A due to his control of the voting rights. However, our understanding is that because Executor only controls the voting rights in connection with the executorship of former UPE's estate, the proper UPE for HSR purposes might be the estate rather than the Executor. We do not think Individual 1 would be viewed as the UPE given her lack of control over the voting rights for the duration of the executorship, but would appreciate confirmation as to whether you share that view, as well as whether the estate or the Executor is the UPE.

Please let me know if you require any additional information.

Thanks,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]