

Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, October 8, 2021 11:17 AM
To: Walsh, Kathryn E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina; Shaffer, Kristin
Subject: FW: Premerger Notification Requirements for Asset Sale - UPE Question

From: Berg, Karen E. <KBERG@ftc.gov>
Sent: Friday, October 8, 2021 11:17:08 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Premerger Notification Requirements for Asset Sale - UPE Question

Correct, except that Company A's UPE is the husband and wife together, e.g., "John and Mary Smith." Either can execute the Affidavit and Certification on behalf of both.

From: [REDACTED]
Sent: Friday, October 8, 2021 9:07:00 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Premerger Notification Requirements for Asset Sale - UPE Question

To whom it may concern:

We are in the process of reviewing and determining an appropriate premerger notification for a pending asset sale transaction. We've reviewed the statute and the rules, along with guidance on "The Most Frequently Asked HSR Questions" page on the FTC's website. We have analyzed the transaction in accordance with the rules and interpretation, but may need some clarity to avoid a misstep. Below is a recitation of facts, and we would truly appreciate your confirmation of our analysis.

Company A is purchasing the assets of three acquired entities for a total purchase price greater than \$92M but less than \$184M. The acquired entities, collectively, have one UPE. Company A is owned by a husband and wife, each owning 50% equity in Company A. Husband actively manages the business while wife is a passive investor. Thus, based upon rules of aggregation, husband is deemed to control 100% of the voting securities in Company A and we are treating the husband as the UPE for Company A for HSR Act filing purposes.

Given the foregoing fact scenario and based on our research, we believe we only have to file one (buyer side) HSR application listing the husband as the UPE of Company A and we only need to pay one filing fee of \$45,000 based on the size of the transaction. We do not believe we need to file a separate (buyer side) application for the wife. Could you please confirm that these foregoing conclusions are correct?

We appreciate your assistance with this matter.

Best,

[REDACTED]