

Shahpe

From: HSRHelp
Sent: Friday, December 1, 2023 10:28 AM
To: Walsh, Kathryn L.; Musick, Plesseina; Fetterman, Michelle; Fetterman, Michelle; Burstein, David
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
To: [REDACTED]
Cc: [REDACTED]
HSRHelp <HSRHelp@ftc.gov>
Subject: RE: UPE Filing question

CC: [REDACTED]

You may make one filing, but if Fund 1-A becomes the UPE, then you must notify the BNO via email before closing. BNO attorneys will then evaluate whether the waiting period should restart for an acquisition that consummates the acquisition with, but counts as a violation. You may also make two filings (with two fees) if you prefer.

From: HSRHelp
Sent: Thursday, November 30, 2023
To: Shaffer, Jonathan; Shaffer, Jonathan; Shaffer, Samuel J.; Six, Anna; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>; Burstein, David
Subject: FW: UPE Filing question

From: [REDACTED]
Sent: Thursday, November 30, 2023 11:25 PM (UTC-05:00) Eastern Time
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: UPE Filing question

All,
We have a quick question we were hoping to ask you. We represent BUYER, a private equity firm, who is planning to make an acquisition of a company that is HSR-reportable. The acquisition is being funded by Fund 1 and Fund 1-A, which will be the 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 name and information, and the same terms. 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 UPE. We would thus not need to submit two filings. 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]

