

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, May 12, 2022 11:24 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: UPE of Trust

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Thursday, May 12, 2022 11:23:55 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: UPE of Trust

[REDACTED]
We agree. However, since both Mr. and Mrs. X are the UPEs, please list both. Only one needs to sign, however.

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

From: [REDACTED]
Sent: Tuesday, May 10, 2022 10:48 AM
To: HSRHelp <HSRHelp@ftc.gov>
Subject: UPE of Trust

Hello folks.

I hope you all are doing well.

I am writing to confirm that Mr. X would be deemed the UPE of Trust X as described below.

US LLC holds directly and indirectly less than 50% of the voting shares of Company A and will acquire additional voting shares of Company A. Trust X is entitled to over 50% of the profits and over 50% of the assets of US LLC. We are assessing whether this acquisition could be HSR reportable and if so whether Mr. X would file as US LLC's UPE.

The settlors of Trust X were Mr. X and Mrs. X and each of Mr. X and Mrs. X can unilaterally revoke Trust X with respect to any community property assets held by Trust X and with respect to any separate property assets either contributed to Trust X. Neither spouse can revoke it with respect to any non-community property assets contributed by the other spouse. The community property assets held by Trust X include a controlling interest in US LLC (the entity that directly and indirectly holds voting shares of Company A and will acquire additional voting shares of Company A). Thus if either revokes Trust X, controlling interests in US LLC would transfer to both of them as their community property.

Mr. X and Mrs. X are the two trustees of Trust X. Neither Mr. X nor Mrs. X can unilaterally remove and replace at least 50% of the two trustees although each can unilaterally resign as trustee. In addition both are beneficiaries of Trust X. Under these facts I believe that each of Mr. X and Mrs. X is a UPE of Trust X and US LLC. Do you agree? If so, and an HSR filing is required when US LLC acquires additional voting shares of Company A, could Mr. X (and not Mrs. X) file as the UPE?

Thanks for your help,
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]