

Sheinberg, Samuel I.

From: Sheinberg, Samuel I.
Sent: Friday, April 29, 2022 5:06 PM
To: [REDACTED]
Subject: RE: Spouses as UPE

Good evening-

You can list them as John and Jane Doe and provide an explanation, in an endnote, that they are a married couple.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Friday, April 29, 2022 4:33 PM
To: Walsh, Kathryn E. <kw Walsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>
Subject: FW: Spouses as UPE

From: [REDACTED]
Sent: Friday, April 29, 2022 4:32:31 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Spouses as UPE

Good afternoon,

I have a situation where I have determined that the Acquired Person is a husband and wife (John and Jane Doe). John and Jane each own 50% each of entity A, which "controls" for HSR purposes the acquired entity, entity B.

HSR Rules state:

- The holdings of spouses and their minor children shall be holdings of each of them.
- only one notification shall be filed by or on behalf of a natural person, spouse and minor children with respect to an acquisition...

Therefore, the Acquired Person is John and Jane. My question is whether I should list only one of them as the Acquired Person on the Notification, e.g. just "John Doe" or just "Jane Doe", or whether I should list them together as "John and Jane Doe".

The rule that is giving me pause is below, specifically the highlighted portion. I cannot tell by the use of the word "or" whether that means only Jane Doe (or only John Doe or their minor child) should be listed as the UPE, or whether John and Jane Doe together should be listed as the UPE on the form.

I appreciate your help.



[§ 803.2 Instructions applicable to Notification and Report Form.](#)

(a) The notification required by the act shall be filed by the preacquisition ultimate parent entity, or by any entity included within the person authorized by such preacquisition ultimate parent entity to file notification on its behalf. In the case of a natural person required by the act to file notification, such notification may be filed by his or her legal representative: *Provided however*, That notwithstanding §§ 801.1(c)(2) and 801.2, only one notification shall be filed by or on behalf of a natural person, spouse and minor children with respect to an acquisition as a result of which more than one such natural person will hold voting securities of the same issuer.

Example:

Jane Doe, her husband and minor child collectively hold more than 50 percent of the shares of family corporation F. **Therefore, Jane Doe (or her husband or minor child)** is the “ultimate parent entity” of a “person” composed to herself (or her husband or minor child) and F; see paragraphs (a)(3), (b) and (c)(2) of § 801.1. If corporation F is to acquire corporation X, under this paragraph only one notification is to be filed by Jane Doe, her husband and minor child collectively.


