

801.1(d)(2)

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Thursday, June 14, 2012 10:34 AM  
**To:** Verne, B. Michael  
**Subject:** Associate question in context of corporate UPE

Mike,

I would like to confirm my understanding relating to the applicability of an associates assessment for a corporate UPE.

Holdco, a corporation, will acquire shares of target, a US corporation, and that acquisition will trigger HSR. Voting shares of Holdco are held 50/50 by Investor A and Investor B. Investor A is a private equity company, and it holds its stake in Holdco in three separate investment funds each of which is its own UPE. Investor B is corporate entity, and it is the UPE of Holdco. Through a shareholder agreement, each of Investor A and B has the right to appoint half of the board (which has an even number of board seats) of Holdco. This right applies collectively to the Investor A funds investing in Holdco, not to any one fund or entity, so it is a right generally consistent with the Investor A voting rights.

There is no separate agreement between Investor A, or any entities affiliated with Investor A, and Holdco or Investor B giving Investor A the right to manage Holdco's investment decisions, and thus Investor A does not individually direct Holdco's investment decisions. Instead, the investment decisions are managed by Holdco's board. It may be the case that the three funds affiliated with Investor A are ultimately managed by the same top GP, but because no one Investor A GP entity has the right to manage Holdco's investments, I do not think that any Investor A entity is an associate of Holdco. I believe this conclusion is consistent with point 2 in the informal letter dated July 28, 2011, and with the informal letter dated February 12, 2012. See <http://www.ftc.gov/bc/hsr/informal/opinions/1107008.htm> and <http://www.ftc.gov/bc/hsr/informal/opinions/1202004.htm>

Many thanks,

[REDACTED]

AGREE  
K. WALSH CONCURS  
BW  
6/14/12