

801.1 (b)

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Wednesday, June 20, 2012 12:49 PM  
**To:** Verne, B. Michael  
**Cc:** Walsh, Kathryn  
**Subject:** HSR Question

Mike,

I have another question for you. Company A is being acquired by Company B. As described below, I am trying to determine the ultimate parent entity of Company A.

#### **Factual Scenario 1**

Company A is a family-owned LLC. Its membership interests are held 49% by Son 1, 49% by Son 2 (both adults), and 2% by the Estate of Father, who is recently deceased. The membership interests are each equally entitled to distributions of the profits of company A and to distribution of Company A's assets upon dissolution. Thus, neither Son 1 nor Son 2 currently have the right to 50% of the profits of company A nor 50% of the profits upon dissolution. Thus, Company A appears to be its own UPE.

#### **Question 1**

Assume in addition that Son 1 and Son 2 are both co-executors of the Estate of Father.

I am aware of previous guidance from the PNO that a spouse who was the personal representative of the Estate of her deceased husband was not deemed to hold shares in the estate. (See File No. 9407005.)

Please confirm that Company A is still its own UPE in this scenario, as an estate is a separate person from Son 1 and Son 2, and there is no rule stating that an executor of an estate is deemed to hold the shares of the Estate. *CORRECT*

#### **Factual Scenario 2**

Assume that, in addition to the above facts, the will of Father directs that Son 1 and Son 2 are to receive equal shares of the Estate's membership interests. It is possible that the Estate will distribute its membership interests to Son 1 and Son 2 after the HSR filing is made, but before closing the transaction. This distribution would most likely occur after the HSR waiting period has ended, but it is possible that the distribution could occur during the pendency of the HSR waiting period. Once the distribution occurs, Son 1 and Son 2 will both be a UPE of the estate due to having 50/50 interests in Company A.

#### **Question 2**

If Estate distributes its membership interests to Son 1 and Son 2 during the pendency of the HSR waiting period, will Son 1 and Son 2 have to make a new HSR filing, as the UPE of the acquired person will have changed? *NO*

Thanks,

*CHANGE IN THE ACQUIRED UPE AFTER THE  
WAITING PERIOD HAS EXPIRED REQUIRES NO  
ACTION*

*B*  
*6/20/12*