

**Gillis, Diana L.**

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**From:** Walsh, Kathryn E.  
**Sent:** Wednesday, August 20, 2014 7:49 AM  
**To:** Gillis, Diana L.  
**Subject:** FW: Question regarding correct filing entity

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**From:** Verne, B. Michael  
**Sent:** Tuesday, August 19, 2014 4:05 PM  
**To:** [REDACTED] Walsh, Kathryn E.  
**Cc:** [REDACTED]  
**Subject:** RE: Question regarding correct filing entity

[REDACTED] - we would allow a filing in the alternative here. We think you are saying that Corp. B is a holding company that currently only holds a minority interest in Opco LLC. If that is the case, we would say that you can file with Partnership A as the UPE and in Item 3 say that Corp. B may increase its holdings in Opco LLC prior to closing such that it will have a controlling interest. Item 5 would only reflect the revenues of Opco LLC, whether Partnership A or Corp. B is the UPE at closing.

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**From:** [REDACTED]  
**Sent:** Tuesday, August 19, 2014 3:51 PM  
**To:** Verne, B. Michael; Walsh, Kathryn E.  
**Cc:** [REDACTED]  
**Subject:** Question regarding correct filing entity

Mike/Kate:

I have a somewhat time-sensitive question regarding the correct filing entity for a proposed acquisition by Opco LLC. Opco LLC was formed pursuant to an "Up-C" reorganization. Partnership A has the right to more than 50% of the rights to profits of Opco LLC; the remaining <50% is held by Corp B. Currently each of Partnership A and Corp B is its own UPE. As part of the ongoing reorganization, existing partners of Partnership A may redeem their partnership interests for common stock of Corp B, with a corresponding increase in Corp B's interest in Partnership A.

Currently Opco LLC's UPE is Partnership A. However, it is possible that between the date that the HSR filing is required to be made (pursuant to the terms of the acquisition agreement) and the closing date, subsequent redemptions by the partners of Partnership A may cause Corp B's right to the profits or assets of Partnership A to exceed 50%. It is not possible at present for Partnership A to determine whether that will occur.

Should the UPE in the filing be Partnership A (the current UPE), or Corp B (the potential new UPE, which would include Partnership A within its person)? If Partnership A is listed as the UPE, but the UPE changes to Corp B prior to closing, would the acquiring person have to amend or re-file? Conversely, what happens if Corp B is listed as the UPE, but the UPE remains Partnership A at closing? Assume that Partnership A and Corp B are purely holding companies of which the only controlling investments in operating companies would be through Opco LLC, so the Item 5 information would be the same (as well the Item 4(c) and 4(d) documents).

Please let me know if there are any additional facts that you think would be relevant.

Thanks in advance,