

**Gillis, Diana L.**

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**From:** Gillis, Diana L.  
**Sent:** Friday, February 06, 2015 9:35 AM  
**To:** [REDACTED]  
**Cc:** Walsh, Kathryn E.; Berg, Karen E.  
**Subject:** RE: New UPE Question

Thanks, [REDACTED] Client X would not be able to rely on its Company A HSR.

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**From:** [REDACTED]  
**Sent:** Thursday, February 05, 2015 2:47 PM  
**To:** Gillis, Diana L.  
**Cc:** Walsh, Kathryn E.; Berg, Karen E.  
**Subject:** RE: New UPE Question

Diana,  
ABC was a newly formed subsidiary of Company A just prior to the Reorganization. In the Reorganization ABC became the UPE of Company A. Then, in the B Acquisition ABC acquired Company B (which became a sister company to Company A). Company A's shareholders (who became ABC shareholders) did not contribute new assets to Company A or ABC at the time of the Reorganization or the B Acquisition.  
Best,  
Mary

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**From:** Gillis, Diana L. [<mailto:dgillis@ftc.gov>]  
**Sent:** Thursday, February 05, 2015 11:46 AM  
**To:** [REDACTED]  
**Cc:** Walsh, Kathryn E.; Berg, Karen E.  
**Subject:** RE: New UPE Question

Mary,

Can you clarify the reorganization – specifically, what comprised ABC? Were new assets contributed above and beyond Company A at the time of the reorg?

-Diana

Diana Gillis  
Attorney  
Premerger Notification Office  
Federal Trade Commission  
(202)326-2220 [dgillis@ftc.gov](mailto:dgillis@ftc.gov)

HSR filing questions? Check the [PNO Blog](#) and [HSR Tips](#).

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**From:** [REDACTED]  
**Sent:** Thursday, February 05, 2015 11:02 AM  
**To:** Walsh, Kathryn E.; Berg, Karen E.  
**Subject:** New UPE Question

Dear Kate and Karen,

Client X filed HSR and observed the waiting period in the first half of 2014 with respect to the acquisition of voting securities of Company A valued in excess of \$151.7 million, but less than 758.6 million. Client X holds less than 10% of the outstanding voting securities in Company A, but they have a representative on the Board of Directors of Company A. Client X acquired in excess of \$151.7 million of Company A voting securities within one year from the expiration of the HSR waiting period.

In the second half of 2014 Company A entered into a transaction whereby outstanding shares of Company A were converted automatically into the right to receive shares of Company ABC stock, on a one-for-one basis (the "Reorganization"), with Company A's shareholders owning the same number of shares of Company ABC common stock as they owned of Company A's common stock immediately prior to the Reorganization and, after taking into account the completion of the B Acquisition discussed in the next sentence, such shares represent a smaller ownership percentage of Company ABC than they would have of Company A. As a result of the B Acquisition, Company ABC acquired Company B. The director appointed by Client X now sits on the board of Company ABC.

Client X now wants to acquire additional shares of Company ABC (within the middle threshold band for which they filed HSR in 2014) and they want to know if they can rely on the HSR they filed for Company A last year. I was not able to find an interpretation directly on point, but I did see in the draft of the upcoming PNPM that when a transaction changes during the waiting period, "refiling is required if the filing was for the acquisition of the UPE, that UPE changes, the new UPE is not an entity that was controlled by the old UPE at the time of filing, and the new UPE is to be acquired." Would this apply to Client X's next acquisition of voting shares of Company ABC, or would Client X be able to acquire shares of Company ABC in reliance upon the Company A HSR Notification filed during 2014?

Please let me know if you have any questions.

Best,

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