

Gillis, Diana L.

From: Gillis, Diana L.
Sent: Thursday, November 05, 2015 9:44 AM
To: [REDACTED] Walsh, Kathryn E.
Subject: RE: HSR UPE Question

[REDACTED] – the PNO has taken the position that the issue is whether the series (here, the relevant sub fund) exist as a separate legal entity under the relevant state/country law. If it doesn't, then it doesn't exist for HSR purposes and you have to look to the entity above that does legally exist. (for example, [1309001](#)).

-Diana

From: [REDACTED]
Sent: Thursday, November 05, 2015 9:20 AM
To: Walsh, Kathryn E.; Gillis, Diana L.
Subject: HSR UPE Question

Hi Kate and Diana,

I have a quick UPE question for you.

Company A is a corporate entity organized as an "Investment Company with Variable Capital" under UK law, and under which exist several sub funds, which are governed by the rules contained in the Collective Investment Schemes Sourcebook ("COLL") published by the UK Financial Conduct Authority as part of their Handbook of rules made under the Financial Services and Markets Act 2000 and the Open-Ended Investment Companies Regulations 2001, as amended.

The sub funds under Company A are not distinct legal entities, but are most likely akin to "40 Act funds" in the US. The shares held by these sub funds are held by a custodian on behalf of and for the benefit of the funds. Although not distinct legal entities, the sub funds nonetheless would seem to meet the definition of "entity" under 801.1(a)(2), which expressly references "funds." Moreover, assuming these funds are entities, no one person or entity would hold 50% or more of any voting securities, or have rights to 50% or more of their profits or 50% or more of their assets upon dissolution.

Accordingly, it would seem that the sub funds may themselves be Ultimate Parent Entities for HSR purposes. Do you agree?

Best regards,

[REDACTED]

PS - Time is somewhat of the essence on this one so if you're able to get back to me this morning I would greatly appreciate it. Thanks again!

[REDACTED]