

From: [Storm, Evan](#)
To: [REDACTED]
Subject: RE: HSR PE Question
Date: Wednesday, June 08, 2016 3:09:55 PM

[REDACTED]

Following up to confirm that if New Fund does not have officers/directors and none are currently slated, then the files of the people acting as officers/directors, such as GP or the investment committee of the GP's private equity firm, must be searched.

Regards
Evan

From: Storm, Evan
Sent: Tuesday, June 07, 2016 4:28 PM
To: [REDACTED]
Subject: RE: HSR PE Question

[REDACTED]

Regarding the 4c/4d search, if New Fund has officers/directors or knows who those people will be, their files must be searched. We are still kicking this around but are leaning to conclude that if New Fund does not have officers/directors and no one is currently slated, then the files of the people acting as officers/directors, such as GP or the investment committee of the GP's private equity firm, must be searched.

Regards
Evan

From: [REDACTED]
Sent: Friday, June 03, 2016 2:43 PM
To: Storm, Evan
Subject: RE: HSR PE Question

Thanks so much. I hope you have a good weekend!

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Storm, Evan [<mailto:estorm@ftc.gov>]
Sent: Friday, June 3, 2016 2:40 PM

To: [REDACTED]
Subject: RE: HSR PE Question

[REDACTED]

See below in red. As for your 3rd bullet, I'm still working on that and should have an answer by Monday.

Regards
Evan

From: [REDACTED]
Sent: Friday, June 03, 2016 10:18 AM
To: Storm, Evan
Subject: HSR PE Question

Evan:

Thanks for speaking with me. Here's a brief outline of the issue and my question.

Deal overview.

- A general partner of a private equity fund will sign a deal agreement to acquire a company with a size of transaction over \$200M as adjusted. In order to complete the acquisition, a New Fund will be established.
- The New Fund will have four limited partners that are investors. None of the limited partners will be entitled to over 50% of the assets or 50% of the profits of the new fund upon dissolution. Each of the limited partners has a different UPE, but they share a common general partner (the private equity fund). As a result, the New Fund is its own UPE for purposes of the HSR filing. See, e.g., <https://www.ftc.gov/es/node/106456> (confirming "the fact that the Funds may have common general partners did not affect the determination of the ultimate parent entity.")
- The New Fund has not yet been created, but we will not be able to take advantage of the size of person exemption because of the size of the transaction. The New Fund is likely to be created immediately before closing.

HSR Filing.

- Since the New Fund has not yet been created, does the general partner make the HSR filing on behalf of the new fund as if it exists? **Yes b/c we want the filing to represent the companies that will be closing the deal.** Who would be able to sign the HSR filing (the general partner)? **Yes.**
- If the New Fund does not have any operations, is all of the information (except associate entities, simply blank). **Items 5 and 8 will be blank. Items 6 and 7 can include associate information.**
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The following informal interpretation suggests that if you know the officers or directors of the New Fund, you should search their files for documents, but that if there are no officers/directors slated, you would have no 4(c)/4(d) documents.

<https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1507002>

Thanks for your help. Happy to have a phone call to discuss if that would be easier.

Best,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]