

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Monday, April 29, 2019 12:37 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Biagioli, Kimberley; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne
Subject: FW: Question Re: UPE Analysis

From: Whitehead, Nora
Sent: Monday, April 29, 2019 12:37:10 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Question Re: UPE Analysis

Agree.

From: [REDACTED]
Sent: Saturday, April 27, 2019 10:28 AM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Biagioli, Kimberley <kbiagioli@ftc.gov>; Carson, Timothy <tcarson@ftc.gov>; Sheinberg, Samuel I. <ssheinberg@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>
Subject: FW: Question Re: UPE Analysis

From: [REDACTED]
Sent: Saturday, April 27, 2019 10:27:25 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: Question Re: UPE Analysis

I am hoping you can help confirm my below UPE analysis is correct:

1. Our client, Corporation A, is a corporation. Corporation A will be the acquired person or entity in a potential transaction for the acquisition of all of its outstanding shares.
2. Corporation A does not have any one person or entity that holds 50% or more of its shares, but there are a series of related funds that collectively hold 50% or more of its shares.
3. LP1 holds approximately 25.7% in Corporation A, LP2 holds approximately 3.4% in Corporation A, and LP3 holds approximately 24% in Corporation A.
4. LP1, LP2, and LP3, however, are all separate legal entities, which each have a different General Partner ("GP") appointed to make decisions for each fund. GP1 is the GP for LP1, GP2 is the GP for LP2, and GP3 is the GP for LP3.
5. Under the definition of "control" for unincorporated entities, LP1, LP2, and LP3 each appear to be their own UPEs.

6. LP1, LP2, and LP3 are structured similarly in that investors of LP1, LP2, and LP3 are entitled to profit distributions based on the percentage of their economic interest. Upon dissolution, capital contributions are first returned, but then GP1, GP2, and GP3 are entitled to 20% of any remaining assets after a certain threshold is reached.

7. There is no single investor that holds 50% or more of LP1, LP2, or LP3. The largest interest held by a single investor in LP1 is 20%, the largest interest held by a single investor in LP2 is 30%, and the largest interest held by a single investor in LP3 is 21.9%. The largest interest held in LP1 (20%), LP2 (30%), and LP3 (21.9%), however, is held by the same investor, i.e., same person or entity.

8. Based on the economic interests held in LP1, LP2, and LP3 in No. 7 above, there is no single person or entity that is be entitled to 50% or more of the profits or assets of LP1, LP2, or LP3.

9. Because no single person or entity holds 50% or more of the outstanding shares of Corporation A, and the related funds with holdings of Corporation A, i.e., LP1, LP2, or LP3, also don't have "common control," i.e., a single person or entity that would be entitled to 50% or more of the profits or assets of those unincorporated entities, Corporation A is its own UPE.

Thanks so much in advance for your assistance.

[REDACTED]

[REDACTED]

[REDACTED]