

**From:** [REDACTED]  
**To:** [Walsh, Kathryn E.](#); [Carson, Timothy](#); [Sheinberg, Samuel I.](#); [Six, Anne](#); [Whitehead, Nora](#); [Musick, Vesselina](#)  
**Subject:** FW: Help regarding newly-created entity that will become acquired person before closing  
**Date:** Wednesday, March 11, 2020 4:43:09 PM  
**Attachments:** [image001.jpg](#)

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**From:** Berg, Karen E.  
**Sent:** Wednesday, March 11, 2020 4:43:06 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Help regarding newly-created entity that will become acquired person before closing

[REDACTED]

You should file with Holdco as the to-be-formed UPE, and indicate that Target will be an LLC at the time of acquisition.

We prefer that an individual who is slated to be an officer or director of Holdco sign the affidavit and certification on its behalf; if that person hasn't been named, an officer or director of Target can sign on Holdco's behalf as long as that person can attest to Holdco's good faith intention to complete the transaction.

[REDACTED]

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**From:** [REDACTED].  
**Sent:** Wednesday, March 11, 2020 1:55:12 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Subject:** Help regarding newly-created entity that will become acquired person before closing

Hello,

I have a transaction where a corporation (Target Co.), which is its own UPE, is being acquired in a reportable transaction. The structure of the transaction is such that, immediately prior to closing (so after HSR is filed), Target Co. will become a wholly-owned subsidiary of a holding company (Holdco), which will become the UPE of the Target Co. (Holdco being its own UPE). Target Co. will then be converted into an LLC (Target LLC). In the end, the buyer will acquire 100% of the non-corporate interests of Target LLC from Holdco.

At the time of filing, Target Co. will be the acquired person, but at time of closing, Holdco will be the acquired person. However, Holdco will not exist at the time of filing.

Which entity should be listed on the form as the acquired person? Is it permissible for Target Co. to be listed as the acquired person and to have an officer or director of Target Co. sign the HSR form, while fully describing the structure of the transaction in the affidavit and Item 3? Or must we list Holdco as the acquired person, and if so, who signs the affidavit and form?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]