
From: Carson, Timothy
Sent: Friday, May 15, 2020 10:26:37 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Size of person question

Size of person is met because the facts you have shared demonstrate the financials are not consolidated at the UPE level, and the ordinary course balance sheets of the controlled portfolio entities, if consolidated, clearly would demonstrate size of person is met. You may submit the financials of the LP and the two portfolio companies to establish size of person is met. Additionally, I would encourage you to add a note to Item 4(b) stipulating that size of person is met.

From: [REDACTED]
Sent: Thursday, May 14, 2020 5:02:25 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Size of person question

Hi HSR Group.

I am working on a new transaction. The UPE is a limited partnership of a private equity firm. The LP has two portfolio companies at this point, and is planning to acquire a third.

Assume that the transaction value is such that size of person is relevant. I need guidance on whether to look at the financial statements of the LP, the portfolio companies, or something else, in order to determine whether total assets or net sales are greater than \$188 million. The issue is that the LP's balance sheet treats investment in the two portfolio companies "at fair value" in terms of the total assets. Based on this balance sheet, total assets are well below \$188 million. On the other hand, the portfolio companies' own balance sheets value the assets at a higher figure. So unfortunately in this instance it makes a difference. I just looked through the Premerger Notification Practice Manual again, and the rule and examples, but I am having trouble finding a clear answer.

Thanks for helping, and I am happy to answer questions.

