

Sheinberg, Samuel I.

To: HSRHelp; HSR Auto Forward List
Subject: RE: Question re. UPE

From: Fetterman, Michelle
Sent: Friday, January 3, 2025 10:13 AM
To: [REDACTED]
Cc: HSRHelp
Subject: RE: Question re. UPE

No, the assets test in 801.1(b)(1)(ii) is still relevant to holders of the first class of units, despite the exclusion for proceeds from a sale of the subsidiary.

From: [REDACTED]
Sent: Monday, December 30, 2024 4:50:13 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Question re. UPE

[REDACTED]

Good afternoon,

I hope this email finds you well. We are trying to determine the UPE of an LLC in connection with the sale of a subsidiary controlled by the LLC.

The LLC has three classes of units with varying owners.

One class is entitled to all ordinary distributions based on operations and all assets on dissolution, but *expressly excluding* in each case the proceeds from a sale of the subsidiary.

The other two classes are entitled to all distributions of net sales proceeds (whether while the LLC is extant or upon liquidation). One of these classes receives all sales proceeds up to a stated \$ threshold, the other class receives all proceeds above of that threshold.

We are assuming that, for purposes of determining the UPE of the LLC for filing, we should estimate the actual sales proceeds available for distribution and run them through the waterfall, such that, the ownership of the first class (which will not participate in these specific distributions) would effectively be disregarded and we would look to the likely distributions to the second two classes to determine the UPE.

Is that the correct approach?

Thank you in advance for your help.

Best regards,

[REDACTED]

