

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, March 22, 2022 2:07 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne
Subject: FW: Question Re: Item 4(b)

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Tuesday, March 22, 2022 2:06:34 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Question Re: Item 4(b)

If top-level (or overlap) financial statements exist, then they should be provided.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Tuesday, March 22, 2022 11:57 AM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>
Subject: FW: Question Re: Item 4(b)

From: [REDACTED] >
Sent: Tuesday, March 22, 2022 11:55:43 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Question Re: Item 4(b)

Hello,

I am seeking some clarification on the instructions for Item 4(b) where the acquiring UPE is a natural person.

For Item 4(b), the instructions provide that a natural person must provide the financial statements for the highest level entity the natural person controls, but also that the acquiring person should provide the most recent reports of the acquiring entity and any controlled entity contributing to any overlaps in Item 7.

Informal Interpretation Nos. 17010005 and 1709003, however, seem to indicate that where a natural person is the UPE of a newly-formed acquiring entity without financial statements, and the UPE does not control any entities that operate in the target's NAICS codes, the natural person can stipulate he/she meets the size of person test without providing the financial statements for any top-level entities. Similarly, these Informal Interpretations seem to indicate that if the UPE does control an entity that operates in the target's NAICS codes, he/she may produce the most recent financial statements for such entity and stipulate he/she satisfies the size of person test without providing the financial statements for any top-level entity. Is my reading of these interpretations correct?

By contrast, in a situation where the acquiring entity controlled by a UPE that is a natural person is not newly-formed and does have financial statements, is it also sufficient to provide those (and the financial statements of any other entity that contributes to an Item 7 overlap) without providing any financial statements for a top-level entity? Or is this a situation in which financial statements for the top-level entity are required?

Thanks very much,

[REDACTED]

[REDACTED]