

## Haynes, Lanea

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**From:** Gillis, Diana L.  
**Sent:** Monday, September 11, 2017 12:28 PM  
**To:** [REDACTED] Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora  
**Subject:** RE: Item 4b

[REDACTED] [see below.](#)

-Diana

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**From:** [REDACTED]  
**Sent:** Monday, September 11, 2017 12:10 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Gillis, Diana L.; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora  
**Subject:** Item 4b

Hi folks.

I hope all is well.

Under the Informal Interpretation copied below, if a natural person (Mr. X) is the UPE of the acquiring entity (a newco without financials), and Mr. X does not control any entities that operate in the target's NAICS codes, may he stipulate in Item 4b that he satisfies the size of person test without having to determine if he has top level entities that may or may not have their own financial statements? **Yes**

If Mr. X does control an entity (Y) that operates in the target's NAICS codes, may Mr. X only produce the most recent annual income statement for Y and stipulate that he satisfies the size of person test? **Yes** If Y does not have an audited annual income statement, would Mr. X be required to produce Y's most recent regularly prepared unaudited income statement? **Yes**

Thanks for your guidance.

Best regards,  
[REDACTED]

## 17010005 Informal Interpretation

**DATE:** January 19, 2017

**TAGS:**

- [Competition](#)  
**RULE:**

Item 4(b)

**STAFF:**

Kristin Shaffer

**RESPONSE/COMMENTS:**

A stipulation is fine, and you can do that right in Item 4(b), rather than an endnote. You are welcome to send the financials, though.

 [Original Image \(55.98 KB\)](#)

## QUESTION

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[REDACTED]

A stipulation is fine, and you can do that right in Item 4(b), rather than an endnote. You are welcome to send the financials, though.

Best regards,

Kristin

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Kristin Shaffer

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-3434 | [kshaffer@ftc.gov](mailto:kshaffer@ftc.gov)(link sends e-mail)

**From:** [REDACTED]

**Sent:** Thursday, January 19, 2017 12:16 PM

**To:** Shaffer, Kristin

**Subject:** Item 4(b) Question

Kristin,

I have an Item 4(b) question. We represent an acquiring person that is a natural person UPE that controls a number of entities, satisfying the size of person test. The acquiring entity is a newly formed entity that does not yet have financial statements and has no current operations.

For Item 4(b), the instructions direct that we provide the financial statements for the highest level entity the natural person controls, but also note that the acquiring person should also provide the most recent reports of the acquiring entity (there are none) and any controlled entity contributing to Item 7 overlaps. In our situation, we do not anticipate any overlaps, so none of the other controlled entities contribute to any overlap.

Interpretations 1609003 and 1608003 don't address this fairly unique situation.

Do we submit the financials for all of the controlled entities (about 10), despite that they are not overlap entities, or not submit any of the financials and just stipulate to satisfaction of the size of person test in an endnote?

As always, thanks for your help.

[REDACTED]

