

Haynes, Lanea

Subject: FW: Affidavit/Cert Question

From: Carson, Timothy
Sent: Tuesday, October 17, 2017 2:30 PM
To: [REDACTED]
Subject: RE: Affidavit/Cert Question

[REDACTED]

Pursuant to Rule 803.2, the acquired entity (using one form) may file on behalf of both UPEs if both UPEs have authorized the acquired entity to file on their behalf. A person with actual authority representing the acquired entity can certify the form and can file one affidavit attesting to the good faith intent of both acquired persons to complete the transaction. (If, however, the UPEs themselves decide they want to attest, both must execute).

Note, however, that the prior advice in 1407005 regarding the submission of 4(b) financials has been superseded by the new form instructions. Under the current instructions, financials (if they exist) must be submitted by both acquired persons and the acquired entity. The filing acquired entity can file those financials on behalf of the acquired persons, or the acquired persons can submit the required financials under separate cover (if they will not permit the filing acquired entity to access the financials).

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From: [REDACTED]
Sent: Tuesday, October 17, 2017 1:33 PM
To: Carson, Timothy
Subject: Affidavit/Cert Question

Ty,

I hope this is a quick question. I know if you have two UPEs on the acquired side of a transaction where a joint venture entity is being sold, you can complete and submit one seller side HSR form, but are affidavits/certifications required from both UPEs, or just from one on behalf of the acquired entity?

I found this interpretation confirming one form and the acquired entity can file on behalf of both UPEs in Items 1(e) and 1(f), but it was not clear if that means only one affidavit and certification from one UPE would suffice? <https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1407005>

Thanks-

[REDACTED]