

Verne, B. Michael

Item 4

**From:** [REDACTED]  
**Sent:** Monday, July 09, 2007 8:04 AM  
**To:** Verne, B. Michael  
**Subject:** Question on information required for Item 4 of the form

Mike,

We are trying to figure out the appropriate item 4(a), (b) and (c) information to include in a filing we are preparing. The facts are as follows:

- Company A (my client) is acquiring Company B and has already submitted its HSR form for that acquisition. Company A's acquisition to acquire Company B will close sometime towards the end of August.
- Company A has also entered into an agreement with Company C to sell Company C some of the assets it will acquire from Company B (the Company B assets to be sold by Company A to Company C will be placed in an LLC and Company C will acquire the LLC).
- Both transactions [(i) A buying B, and (ii) A selling some of B's assets to C], will occur the same day. An instant after Company A acquires Company B it will sell the relevant Company B assets to Company C.
- As noted in the first point, Company A and Company B have already filed their HSR forms for the big transaction. We are now preparing the HSR form for the sale of B's assets by Company A to Company C. In this transaction Company A is the acquired person and will submit Item 5 financial data only for the assets it will be selling. It will get this information from Company B as Company A does not yet own the assets and did not get any of this information during due diligence. As to item 4, Company A will supply its SEC filings for (a), its financial statements for (b) and any 4(c) documents that it has with respect to its sale of the Company B assets to Company C.
- A question has arisen about whether there is any need to supply item 4(a), (b) or (c) information from Company B about Company B or the Company B assets that we will be selling to Company C.
  - Item 4(a) - For example, I have assumed that since we don't own Company B at the time we will make the HSR filing that we do not have to supply Company B SEC filings for item 4(a) in this filing even though we will own Company B when the deal closes in August. Is that correct?
  - Item 4(b) - Similarly, I have assumed Company A doesn't have to supply Company B information for item 4(b) of the Company A filing. Is that correct? Does Company A have to supply financials for the Company B assets it is selling to Company C? If it does not currently have such financials should it go to Company B and try to get them? If Company B doesn't have any separate financials for those assets is Company A required to prepare "pro-formas" for the assets it is selling to Company C?
  - Item 4(c) - Is Company A required to go to Company B and get any 4(c) documents that Company B might have about the Company A-Company C transaction? Keep in mind Company A does not own Company B now, but will at the time of the closing on the A-C transaction - at least for an instant. Of course, no Company B

document about the deal that Company A never received could not have been used by Company A (the UPE making the filing) for purposes of analyzing the A-C transaction since it didn't have them.

If I have been too confusing with my examples and you would like to discuss this, please give me a call.

Thanks for your help,

[REDACTED]

[REDACTED]

To the extent this communication contains any statement regarding federal taxes, tha

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Thank You.

Item 4(a) - Correct

Item 4(b) - Correct - Company A doesn't have to supply Company B information for item 4(b) of the Company A filing. A does not have to supply financials for the assets. There is no need to do pro forma financials.

Item 4(c) - Company A is not required to go to Company B and get any 4(c) documents that Company B might have about the Company A-Company C transaction.

BM  
2/19/07