

ITEMS 6 & 7

Verne, B. Michael

From: [REDACTED]
Sent: Monday, January 09, 2012 7:23 PM
To: Verne, B. Michael; Walsh, Kathryn
Subject: Items 6 and 7 and top level associate Question

Mike and Kate

I have a "top level associate" question related to Items 6 and 7 and also wanted to confirm the informal interpretation from September 12, 2011 (see below link). I am working through a scenario where there are multiple investment funds within a firm. Fund 1 is planning to make an investment in Target. Fund 1 and three other fund entities (the "Other Funds") each has an existing minority position in Opco (i.e. 5% or more but less than 50%), and in the aggregate own a majority of Opco. Opco has an overlapping NAICS code with Target. A natural person ("Principal") has a contractual right to manage the general partners and investment managers of Fund 1 and the Other Funds.

I believe that the analysis for determining associates is to follow the control of Fund 1 and the Other Funds through HSR and investment management principles, which would lead up to the Principal and then back down to Fund 1 and the Other Funds and to the respective general partners and investment managers. For reporting under Item 6, though, the "top level associate" of Fund 1 in each case would be each of the Other Funds because each is its own UPE for HSR purposes and has the actual ownership of the interest in Opco. For reporting under Item 7, though, since none of Fund 1 or the Other Funds derives revenue from Opco, notwithstanding that the aggregate ownership among Fund 1 and the Other Funds is greater than 50%, there would be no reporting of holdings, associate or otherwise, under Item 7 with respect to Opco.

Please let me know if you agree with the above analysis.

Thanks in advance for your assistance.

[REDACTED]

<http://www.ftc.gov/bc/hsr/informal/opinions/1109003.htm>

AGREE -
K. WALSH CONCURS

BM

1/10/12

[REDACTED]

[REDACTED]