

Gillis, Diana L.

Subject: FW: HSR Item 4(c) Question

From: Whitehead, Nora
Sent: Monday, July 27, 2015 2:03 PM
To: [REDACTED]
Cc: Walsh, Kathryn E.; Berg, Karen E.; Gillis, Diana L.
Subject: RE: HSR Item 4(c) Question

You need not provide any documents unless the Newco has officers/directors or there are people slated for those roles.

Nora Whitehead
(202) 326-3262
Check out the [PNO Blog!](#)

From: [REDACTED]
Sent: Thursday, July 23, 2015 10:11 AM
To: Whitehead, Nora
Cc: Walsh, Kathryn E.; Berg, Karen E.; Gillis, Diana L.
Subject: RE: HSR Item 4(c) Question

At this time there are not.

From: Whitehead, Nora [<mailto:nwhitehead@ftc.gov>]
Sent: Thursday, July 23, 2015 10:09 AM
To: [REDACTED]
Cc: Walsh, Kathryn E.; Berg, Karen E.; Gillis, Diana L.
Subject: RE: HSR Item 4(c) Question

Are there individuals from the investing entities that are expected to become officers or directors of Newco? If so, their files should be searched.

Nora Whitehead
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Check out the [PNO Blog!](#)

From: [REDACTED]
Sent: Wednesday, July 22, 2015 12:47 PM
To: Walsh, Kathryn E.; Berg, Karen E.
Subject: HSR Item 4(c) Question

Hi Kathryn and Kate,

Hopefully you are both enjoying the Summer. I have an Item 4(c) question, which I bet is something that you receive often, although I was not able to locate any definitive guidance.

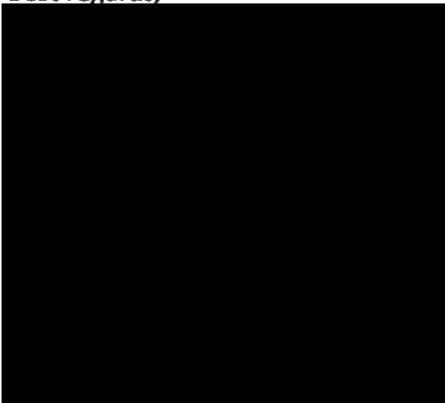
In this scenario, there are three entities (A, B, and C) each investing 33% into an unincorporated NewCo, created specifically for this transaction. NewCo qualifies as its own UPE, as none of A, B, or C is entitled to 50% of NewCo's profits or assets upon dissolution. NewCo does not have a general partner or other investment advisor. NewCo is acquiring voting securities of X. You may assume that NewCo's acquisition of X satisfies the necessary SOT and SOP tests.

My question is, when searching for Item 4 documents for NewCo's acquisition of X, must we include documents that went to officers and directors of A, B, and C that otherwise meet the Item 4 requirements? Based on Informal Interpretations, such as 0610010, 0512023, the answer appears to be no. I believe we must only include officers or directors of NewCo and, if they exist, of any investment committees or general partners if, in the aggregate, the entities represented by the ICs or GPs hold a majority of the shares in NewCo (i.e. A and B had the same GP).

Does this change, however, if there are no known officers or directors of NewCo? Similarly, what if there are individuals identified as likely officers or directors of NewCo, but they change after filing but before closing?

Your guidance is much appreciated.

Best regards,



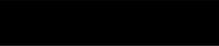
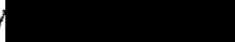
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