

Gillis, Diana L.

From: Shaffer, Kristin
Sent: Thursday, October 27, 2016 10:04 AM
To: [REDACTED]
Cc: Walsh, Kathryn E.; Gillis, Diana L.
Subject: RE: New 4(b)

[REDACTED]

If the UPE and Acquired Entity are operating companies, you do not need to provide financials for their consolidated subsidiaries. However, the financials for unconsolidated subsidiaries that derive revenue in an overlapping code should be provided.

Best regards,
Kristin

Kristin Shaffer
Attorney
Premerger Notification Office
Federal Trade Commission
202-326-3434 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Wednesday, October 26, 2016 3:47 PM
To: Shaffer, Kristin; Walsh, Kathryn E.; Whitehead, Nora; Gillis, Diana L.
Subject: New 4(b)

Hi Kristin,

I have question regarding new item 4(b) and the informal advice below. I have an acquiring person filing for a publicly traded company (not a PE firm) that has numerous subsidiaries. I understand that we are required to submit financials for the UPE and the acquiring entity. Do we need to also provide financials for consolidated or unconsolidated subsidiaries that derive revenue in an overlapping code?

Thanks,

[REDACTED]

1609003 Informal Interpretation

Date: September 6, 2016

Tags:

Competition

Rule:

Item 4(b)

Staff:

Kristin Shaffer

Response/Comments:

The change in the instructions for 4b is intended to relieve filers of the burden of providing separate reports for unconsolidated portfolio companies that do not contribute to overlaps, while adding a requirement to provide reports for portfolio companies that do have revenue that contributes to an overlap, whether or not those companies are consolidated into the annual report of the UPE. There is no requirement to provide reports for consolidated entities within an operating company.

The change is intended to reach acquiring persons, such as funds and holding companies, where the financials of the UPE do not necessarily show or break out information about the operating company that contributes to the overlap. We are not interested in the separate financials of subsidiaries of operating companies.

[Original Image \(63.98 KB\)](#)

Question

[REDACTED]

Yes. The change is intended to reach acquiring persons, such as funds and holding companies, where the financials of the UPE do not necessarily show or break out information about the operating company that contributes to the overlap. We are not interested in the separate financials of subsidiaries of operating companies.

Also, we are no longer requiring the separate financials of unconsolidated entities that do not contribute to overlaps.

Best regards,

Kristin

From: [REDACTED]

Sent: Friday, September 02, 2016 4:58 PM

To: Shaffer, Kristin; Walsh, Kathryn E.; Storm, Evan; Gillis, Diana L.; Whitehead, Nora

Subject: RE: Question re: New Item 4(b) Requirement

Kristin,

One other clarifying question. I read your note to say, in part, that a UPE that is an operating company does not need to provide additional financials for entities that are consolidated even if the consolidated subsidiary contributes to the overlap. In other words, if the Acquiring Person is an operating company, as opposed to a fund, it would not need to separately provide the financials for a consolidated entity that contributes to the overlap. Is that a correct reading?

Thanks,

[REDACTED]

From: [REDACTED]

Sent: Friday, September 02, 2016 3:06 PM

To: 'Shaffer, Kristin'; Walsh, Kathryn E.; Storm, Evan; Gillis, Diana L.; Whitehead, Nora

Subject: RE: Question re: New Item 4(b) Requirement

Thanks – have a good weekend!

[REDACTED]

From: Shaffer, Kristin [<mailto:kshaffer@ftc.gov> (link sends e-mail)]

Sent: Friday, September 02, 2016 2:54 PM

To: [REDACTED] Walsh, Kathryn E.; Storm, Evan; Gillis, Diana L.; Whitehead, Nora

Subject: RE: Question re: New Item 4(b) Requirement

[REDACTED]

Yes, you are on the right track. Consolidated annual reports do not, in all cases, accurately represent underlying businesses. For example, the annual reports of funds do not always provide information about the portfolio companies they control.

The change in the instructions for 4b is intended to relieve filers of the burden of providing separate reports for unconsolidated portfolio companies that do not contribute to overlaps, while adding a requirement to provide reports for portfolio companies that do have revenue that contributes to an overlap, whether or not those companies are consolidated into the annual report of the UPE. There is no requirement to provide reports for consolidated entities within an operating company.

Please feel free to contact us with questions regarding specific filings.

Best regards,

Kristin

Kristin Shaffer

Attorney

Premarmer Notification Office

Federal Trade Commission

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From: [REDACTED]

Sent: Thursday, September 01, 2016 4:11 PM

To: Walsh, Kathryn E.; Storm, Evan; Gillis, Diana L.; Whitehead, Nora; Shaffer, Kristin

Subject: Question re: New Item 4(b) Requirement

All,

Congratulations on getting the new rules/instructions out.

I had a clarifying question related to 4(b), and the requirement for the "the most recent reports of the acquiring entity(s) and any controlled entity whose dollar revenues contribute to an overlap in Item 7." Does this requirement apply even if the financials are consolidated? If so, is the revised Item 4(b) requirement really targeted at PE funds, and making sure you see the financials for the specific portfolio company that creates the overlap in Item 7 (similar to the requirement in Item 7(b) that asks for the name of the entity within the person)?

I'm thinking about a retail or healthcare context where there may be hundreds of separate legal entities that contribute to an overlap in Item 7 (where pulling hundreds of separate financials may get pretty unwieldy). Even trying to follow the trail to the specific entity within a large global company that contributes to an overlap can be a task that is more challenging than it sounds.

Any guidance is much appreciated.

Best,

