

4(c)

Verne, B. Michael

From: [REDACTED]
Sent: Monday, October 09, 2006 6:05 PM
To: Verne, B. Michael
Subject: FW: 4(c) question

Dear Mike,

I attach below some correspondence we had in March regarding 4(c) searches. I am now faced with a similar situation, but not certain that the principle below would apply here. It seems to me the principle you articulated in March is that officers/directors and investment committees of investors who will hold only a minority interest in the acquiring entity need not be searched.

The current transaction is structured as follows: a newly-formed entity (NewCo) will acquire a target. The size of person and transaction tests are met. NewCo has 3 investors: investor #1 (will hold 45%), investor #2 (will hold 45%) and investor #3 (management group of the target, will hold 10%). No one person/entity will have the contractual right to appoint 50% of the board of directors. I have a two-step question:

(1) is it still the case that I need not search officers/directors and investment committee members of investor #1 and investor #2 that will hold 45% each (they are not affiliated with each other)

OK

(2) if no, does the answer hold true if the officers and directors of NewCo have not yet been appointed -- meaning no one would be searched?

IF KNOWN THAT THEY WOULD BE OFFICERS/DIRECTORS, MUST BE SEARCHED

Thank you,

-----Original Message-----

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]
Sent: Wednesday, March 22, 2006 1:01 PM
To: [REDACTED]
Subject: RE: 4(c) question

Bruchell
10/10/06

If the Newco has officers and directors, they would definitely be included. I would also search the files of the investment committees that in aggregate hold 50% or more of Newco and have the same GP.

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, March 22, 2006 9:28 AM
To: Verne, B. Michael
Subject: 4(c) question

Mike,

I'm trying to determine exactly who would qualify as an officer or director for purposes of a 4(c) search. This is a question similar to some you have answered previously (informal staff opinions 0512023 and 0503019).

I represent a newly-formed company (NewCo) making a reportable acquisition. Eight different funds invest in NewCo, none holding 50% or more of NewCo's voting securities, nor having the contractual right to appoint 50% of the board. Thus, the NewCo is its own UPE.

Each of the eight investing funds is composed of multiple investors. Four of the investing funds have the same GP ("GP1"), two others have the same GP ("GP2"), and the final two have the same GP ("GP3").

From your opinion number 0503019, it seems to me that to the extent that the three GPs have investment committees (or an equivalent type of group), the members of those investment committees may be considered officers or directors for purposes of a 4(c) document search. However, based on opinion number 0512023, perhaps only the investment committee of the GP for the funds constituting a majority of the shares of NewCo should be searched. For example, say that each investing fund holds 12.5% of NewCo. Thus, only the investment committee of GP1 would be acting as general partner for investors holding a majority stake (aggregated) in NewCo, and therefore perhaps only that investment committee should be searched.

If NewCo has officers and directors, is it sufficient to search these people, or must I still search the investment committee (or equivalent) of GP1, and perhaps GP2 and GP3 as well? Are there any others that may need to be searched?

Many thanks, Mike.

