ITEM 6(c)(ii)

Verne, B. Michael

From: [redacted]
Sent: Thursday, February 09, 2012 4:50 PM
To: Verne, B. Michael
Subject: Associates question

Hi Mike,

I would like to confirm my understanding regarding the associates analysis for a Newco, which will be its own UPE, acquiring a target.

Two PE fund groups, Group A and Group B, will invest in a Newco which will in turn acquire the target. Assume that the investments will be made by a handful of LPs from each of Group A and Group B. Assume that each LP is its own UPE but all Group A funds are managed by the same GP A and all Group funds are managed by the same GP B. (In this case, if one LP A were the UPE of Newco, GP A would clearly be an associate.) The Group A and Group B funds, in the aggregate, will each invest 50/50. The Newco will be set up as either a corporation or LLC but, in either case, there will be a board (or board-like entity) and neither Group A nor Group B will have the right to appoint 50% or more of the board. Decisions of the board, including further investment decisions of Newco, will require approval of at least one director designated by each of Group A and Group B.

Your opinion below suggests that, in such a case, Newco would have no associates.

http://www.ftc.gov/bc/hsr/informal/opinions/1107008.htm

Do you agree?

AGREE — NEWCO HAS NO ASSOCIATES.
BM
K.W. CONCURS
2/13/12

Many thanks as always.

[redacted]

[redacted]

4

Rule(s):	Item 6(c)(ii)
Staff:	Michael Verne
Response / Comments:	07/28/2011 1) The 49% holding of the acquiring person in X would be reported in Item 6(c)(i). The 2% holding of the associate would not be reported in 6(c)(ii) because it is less than 5%. You would not aggregate the holding of the acquiring person and the associate and report in Item 7. 2) You are correct -if the Newco is its own UPE, we wouldn't get any additional information, unless one of the sponsors is a "lead investor" who individually directs Newco's investment decisions. 3) If there are two 50-50 sponsors of the Newco, the sponsors are the acquiring persons and each would look to its associates when responding to Item 6(c)(ii) and Item 7.
	Original Image File

From: **(Redacted)**
Sent: Thursday, July 28, 2011 2:20 PM
To: Verne, B. Michael
Subject: Associates Questions

Hi Mr. Verne,

I participated in the Ropes web-discussion (which was very helpful) and I have a couple of follow up questions:

1. I asked this question on the Q&A, but didn't feel that it was completely understood, so I would appreciate your thoughts on it -one fund holds 49% of Company X; an Associate (another sister fund) also holds 2% of Company X. If NAICS overlap exists with respect to Company X and the target/seller, do you disclose under Item 6 (c)(ii) (J think, per the instructions, it would be "none"), Item 7(a) (per the instructions, again "none"), Item 7(b)(ii) and 7(d) (per the instructions, I think "none" - - I would think a less than 5% holding of an Associate would not be an Associate, so, would not be subject to these items). If this is the case, no disclosure of 50%+ holding would result (no different than the old form), nor will there be any disclosure of the Associate's holdings (since under 5%) in the Acquiring Fund's identical holdings (only the Acquiring Fund's disclosure under 6(c)(i), setting forth a non-controlling 49% interest -so, no additional disclosure of the 2% holdings results). Is this correct -or do we need to disclose somewhere that the Sponsor holds a controlling interest of Company X via multiple sister funds?
2. I was confused about the Club Holding Corp. discussion (that the new form results in greater disclosure of the Club member sponsors holdings) -if there is no Sponsor acquiring more than 50% in the aggregate (via multiple sister funds) (Le., 30% Sponsor X, 40% Sponsor V, 30% Sponsor Z) -I am not sure that there would be any more disclosure than under the old form (Le., just the item 6(b) information, which existed in the old form). In addition, in a 50/50 deal (with a lot of sister funds for each

Sponsor), I guess the important question is whether the new Club Holding Corp. has an investment manager (to go down to the Associates of the investment manager). If that is the case, I suppose you could have 2 Sponsors with sister funds aggregating to 50%, without the requirement of disclosure of control in subsequent HSR filings for a non-investment managing Sponsor, even if it has 50% (i.e., 2 Sponsors, 50/50 (when taking into account the multiple sister funds each has), with only one (or none) of the Sponsor being the investment manager). Also, what if there is no "investment manager" - the Club Holding Corp. has 1 director each appointed by the 2 sponsors, but with no investment manager contract.

I would appreciate your thoughts on these two questions.