

Dear Carl Icahn: What Happened To That 50% Of Herbalife FTC Filing?

Jan. 18, 2017 12:46 PM ET | Includes:Herbalife Ltd. (HLF)

On September 13th, 2016, following the Delivering Alpha conference in New York; CNBC, Bloomberg, MarketWatch, Business Insider, all reported:

“ "Carl Icahn said he has asked the Federal Trade Commission for the right to purchase up to a 50% stake in nutritional supplement company Herbalife".

Transcript from CNBC here: www.cnbc.com/2016/09/13/cnbc-exclusive-cnbc-scott-wapner-interviews-carl-icahn-from-cnbc-institutional-investor-delivering-alpha-conference.html

NOTE: Carl Icahn "...And here's a little secret for your show, that I've asked permission -- I've gone to the FTC to get accelerated treatment for the right to go to 50%, up to 50%, which is going way up."

www.bloomberg.com/news/articles/2016-09-13/icahn-says-he-s-asked-for-ftc-permission-to-own-50-of-herbalife

Assuming that Mr. Icahn filed with the FTC on September 13, 2016 pursuant to 15 U.S. Code S18a and the rules at 16 C.F.R. Parts 801, 802 and 803, a 30 day waiting period clock commenced.

If no early termination request was made by Mr. Icahn and no substantive issues were identified, then the review period would have expired without a public disclosure, around approximately October 14th. Mr. Icahn would then have been free to increase his stake up to his 50% stated interest thereafter.

We know he did not do this!

If an early termination request had been made by Mr. Icahn, notification of the granting status for same would have been made within 14 to 21 days, on average, and been publicly disclosed in the Federal Register and on the FTC website. I have not seen such a disclosure and from a search of the FTC website cannot find same either.

Finally, in the event substantive issues were identified by FTC or DOJ, a second request period would have commenced wherein Mr. Icahn would have been party to receipt of a subpoena for a wide array of documents. He would then be precluded from increasing his stake to 50% until 30 days after he has complied with the requirements of the second request. From what I have read, compliance can take anywhere from 1 month to 6 months. Here is where I have a few questions.

1. If Mr. Icahn has received such a second request and/or subpoena consistent with the rules, is this not a potentially material event requiring disclosure for IEP shareholders (I note the 10-Q was filed November 3rd, 2016 and knowledge of such a second request may have been known at that time).

2. Given the public nature of the pronouncement from Mr. Icahn at Delivering Alpha, and his well founded and very reasonable dislike for excessive regulatory burden, would it not be an opportune time for him to highlight if his attempt to gain this purchase right has run into a regulatory burden compliance wall?

Whether positioned long or short, all shareholders would benefit by having a clearer picture of where Mr. Icahn stands in his goal to have the right to buy "up to" 50% of Herbalife.

Disclosure: I am/we are short HLF.

Stocks: HLF