

ITEM 4(c)

Verne, B. Michael

From: [REDACTED]
Sent: Monday, May 21, 2012 9:47 PM
To: Verne, B. Michael
Subject: HSR Question - Item 4(c) - Officers or Directors of Subsidiaries

Mike:

I had a couple of questions regarding Item 4(c) of the HSR Notification and Report Form. I would appreciate it if you could share the PNO's position with respect to the following.

First, I understand that it is the PNO's position, as stated in its April 26, 2012 tip sheet, that drafts of documents, for which there is a final version, do not need to be submitted "unless the draft went to the Board" because "when a copy of a draft document is sent to the Board, it ceases to be a draft." Is it the PNO's position that a draft document must have been sent to the full board to meet this criteria? Or would a draft document sent to a single director qualify? Would a draft document sent to the executive committee or some other subcommittee of the board qualify?

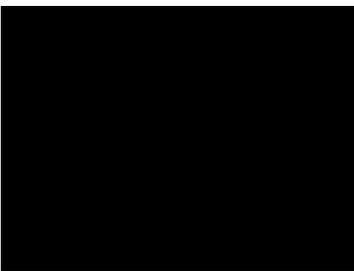
Second, I understand that Interpretation 257 of the ABA *Premerger Notification Practice Manual* (4th ed), advises that the PNO take the position that responsive 4(c) documents prepared by or for "any officer or director of the acquired person or acquiring person or of any entity within that person" must be submitted. (Emphasis added).

If a document is prepared by or for an individual that is not an officer or director of an entity that is a party to an acquisition, but that individual is an officer or director of a subsidiary, such as a foreign subsidiary, not involved in the transaction, must it be submitted? Is the test whether the individual prepared or received the document in the person's role as an officer or director? Or whether the subsidiary of which the individual is an officer or director is involved in some manner in the transaction?

Third, if it is the PNO's position that documents provided to a person that is a director of "any" subsidiary qualify as 4(c) documents and that a draft provided to any director ceases to be a draft, then I would appreciate your advice as to whether the "Board" referenced in the April 26 tip sheet is necessarily the board of the acquired person or acquiring person, or whether the board of a subsidiary or a single member of such a board qualifies, so that all drafts prepared by or provided to an individual who happens to be on the board of a foreign subsidiary not involved in the transaction must be submitted.

I thank you in advance for clarifying the PNO's position. If discussion of this issue would be useful, of course, please let me know.

Best regards.



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1. We have drawn a bright line on drafts submitted to the entire board of the person filing notification or the entire board of a sub (probably the acquisition vehicle), not a single director. Also drafts submitted to entire committees or subcommittees of the board which are comprised of board members.
2. You would submit any document that meets the criteria of 4(c) that was prepared by or for any officer or director of any subsidiary. I think the example of a foreign sub that is not involved in the deal is a bit of a red herring. Why would such an officer or director have 4(c) documents specifically related to the acquisition if he is not involved in the deal? If he did have a doc, it would probably relate to the foreign market where the sub is located and would not be responsive. Besides, I can't imagine why you would even be searching the files of an officer or director of a sub that has nothing to do with the deal.
3. If my answers to 1 and 2 make sense, I think 3 is moot.

BN
5/22/12

K. WALSH CONCURS