

ITEM 4(c)(d)

Verne, B. Michael

From: [REDACTED]
Sent: Monday, January 07, 2013 4:13 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Question regarding Item 4(c)/(d)

Hi Mike,
Happy New Year!

We are hoping to get your guidance on the exclusion of certain documents under Item 4(c)/(d).

Our client, Company A, is selling stock in exchange for cash and shares of Company B, the buyer. Pursuant to the transaction agreement between the parties, B may bring in a coinvestor, C, to purchase its shares to provide additional funding for the transaction. In the event that C comes in, A will receive fewer shares of B but the cash consideration will increase to offset the reduction in B shares that A receives in consideration. C will need to determine whether it has an HSR filing obligation in connection with the acquisition of B's shares but it is unlikely that this will be determined at the time the HSR is filed for the transaction between A and B.

Nonetheless, because the transaction between C and B is separate from the transaction between A and B, we may exclude from the HSR filing for the transaction between A and B any documents created by A, B or C for purposes of evaluating C's investment in B (or impact on transaction between A & B) because these documents were not created for the purposes of analyzing the transaction between A and B, for which our client is filing HSR. Do you agree?

Best regards,

[REDACTED]

[REDACTED]

AGREE
Bm
1/8/13

K-WALSH CONCURS

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