

Items 4(c) } 4(d)

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Monday, January 14, 2013 11:15 AM  
**To:** Verne, B. Michael  
**Subject:** Questions on Items 4(c) and 4(d)

Hi Mike,

I hope you're doing well. I write to ask a couple of questions about Items 4(c) and 4(d).

First, I have a question about the "clean break" rule. Assume that Buyer A and Company B discussed a transaction four or five years ago (the "old transaction") where Buyer A was considering buying a business (the "Target Business") from Company B, but Company B then sold a 50% interest in the Target Business to Third-Party C, marking a clean break to the old transaction between A and B. Today, however, Company B and Third-Party C, both ultimate parents now for the Target Business, are selling the Target Business to Buyer A (the "current transaction"). In the course of evaluating the current transaction, officers of Buyer A dust off and review and analyze due diligence and other files from the old transaction, and these files from the old transaction discuss Item 4(c) and 4(d)-related content. However, Buyer A's review of the old files is passive in that Buyer A does not attach them as an exhibit to a new otherwise 4(c) or 4(d)-responsive report analyzing the current transaction.

In this situation, where Buyer A simply reviews or analyzes files from the old transaction, my understanding is that the old files are not 4(c) or 4(d)-responsive for the current transaction. Rather, to be 4(c) or 4(d) responsive for the current transaction, Buyer A would have to attach them as an exhibit to a new report that analyzes the current transaction with regard to 4(c) or 4(d) topics. Is my understanding correct?

Second, on Item 4(d)(iii), I would like to confirm the guidance from the FTC website that "If a document makes a reference to synergies with no quantified dollar amount attached (e.g., the deal with result in synergies) this is not enough to make a document responsive to Item 4(d)(iii)."

I read this guidance to mean that a document must actually state a specific dollar amount to be responsive to Item 4(d)(iii). Thus, if a document describes and analyzes various categories of synergies that could be expected to flow from a transaction -- but the document does not quantify a dollar value of these expected synergies -- then the document is not responsive to 4(d)(iii).

Similarly, if one document (Doc. #1) estimates that \$50 million in synergies will flow from a merger, and Doc. #1 gives the assumptions that went into that estimate, then Doc. #1 is 4(d)(iii)-responsive. But if a separate document (Doc. #2) also happens to describe the synergies -- without mentioning any dollar estimate -- then Doc. #2 is not 4(d)(iii)-responsive, even if Doc. #2 gives a more detailed description of the synergies than Doc. #1 gives.

Would you please let me know if my understanding of the guidance is correct?

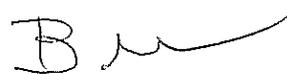
Many thanks,

[REDACTED]

The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended

Our take is that if the 4(c) and (d) documents that were created in connection with the old transaction are used by officers or directors to analyze the new transaction, they would be responsive. The analysis of attaching an old document to a new one comes into play with ordinary course documents that can become 4(c) by incorporating them as an exhibit to a new 4(c) document.

We think that you are reading our advice on synergy documents too narrowly. What we meant was that if a document, for instance, made a statement that "the deal will result in synergies", without any other information, that document would not be responsive. However, if a document has substantive analysis of different categories of synergies, even without attaching a dollar amount to them, we would consider it responsive.



1/19/13

KW - CONCURS.