

## Haynes, Lanea

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**From:** Gillis, Diana L.  
**Sent:** Tuesday, April 18, 2017 9:37 AM  
**To:** [REDACTED] Walsh, Kathryn E.; Berg, Karen E.; Whitehead, Nora; Storm, Evan; Shaffer, Kristin; Carson, Timothy  
**Subject:** RE: Question Regarding Dividends

We agree.

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**From:** [REDACTED]  
**Sent:** Monday, April 17, 2017 9:08 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Gillis, Diana L.; Whitehead, Nora; Storm, Evan; Shaffer, Kristin; Carson, Timothy  
**Subject:** Question Regarding Dividends

All,

I am writing to confirm that a payment by the target of its pre-existing cash through dividend payment to its own shareholders is not counted towards the size of the transaction. See [#0410008](#) and [#0803007](#); see also [#0904007](#) (indicating that a dividend could be used to reduce size of person). This is not an unusual occurrence: parties often explicitly include provisions in their purchase agreements to adjust the purchase price based on cash-on-hand at closing, and buyers generally want to avoid paying (and, in particular, taking on debt in order to pay) "cash for cash." We believe that this situation is different than a dividend based on proceeds from a transaction-related loan as part of an LBO, which we believe may have been considered in interpretation [#1607003](#).

Can you please confirm whether you agree that dividends of pre-existing cash need not be included in the size of transaction calculation?

Thanks,

[REDACTED]

[REDACTED]

[REDACTED]