

## Sheinberg, Samuel I.

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**From:** [REDACTED]  
**Sent:** Thursday, July 26, 2018 10:04 AM  
**To:** Walsh, Kathryn E.; Carson, Timothy; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora; Cummings, Stephanie  
**Subject:** FW: HSR Filing - Item 4(c) and 4(d) Question

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**From:** Berg, Karen E.  
**Sent:** Thursday, July 26, 2018 10:03:29 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: HSR Filing - Item 4(c) and 4(d) Question

[REDACTED]

Your take on our published guidance may be a bit too broad, insofar as we do allow some documents to be excluded if they were created specifically for a potential buyer that is not a current party to the transaction *and* those documents were not relied upon by the current buyer(s). If they were relied upon, it does not matter for 4(c) when they were created.

Karen

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**From:** [REDACTED]  
**Sent:** Tuesday, July 24, 2018 11:53 AM  
**To:** Berg, Karen E. <KBERG@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>  
**Cc:** [REDACTED]  
**Subject:** HSR Filing - Item 4(c) and 4(d) Question

Hi Karen and Kristin,

We represent a client who will making an HSR filing in the next week. The client, who is the acquired entity in this transaction, spent several months within the last year and a half discussing a potential transaction with one of its competitors in the market. Given the size of each party and the nature of the transaction, there were many reports, emails, and other documents prepared that analyzed the potential transaction with the competitor. Ultimately, that transaction was not consummated. Our client then engaged in a bid process, and selected an acquiring entity that is not a direct competitor.

We have read the guidance attached to suggest that all documents related to prior possible acquisitions, to the extent that they are related to Item 4(c) and 4(d) material, are responsive, despite the fact that the prior transaction is not the transaction being consummated. Our concern is that a wealth of Item 4(c) and 4(d) materials that do not relate to the transaction being consummated may cause confusion, and are generally not relevant to the transaction being filed (for which there are very few Item 4(c) and 4(d) documents that relate directly to the transaction).

Obviously, to the extent that market analyses, CIMs, and other reports were prepared in connection with the prior proposed transaction, those would be provided, as they have Item 4(c) and 4(d) information that is likely relevant to the directors and officers in considering the proposed transaction. However, we were unsure if documents that only contained Item 4(c) and 4(d) information related to the prior proposed transaction were documents that are responsive and should be provided, especially since many of the 4(c) documents are more than a year old.

Please let us know if you believe that documents related to a prior, unconsummated transaction that relate specifically to such transaction should be provided.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]