

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Wednesday, December 12, 2018 12:19 PM
To: Berg, Karen E.; Carson, Timothy; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora
Subject: FW: 4(c)

From: Walsh, Kathryn E.
Sent: Wednesday, December 12, 2018 12:19:17 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: 4(c)

[REDACTED]

The drafts must come in.

Kate

From: [REDACTED]
Sent: Tuesday, December 11, 2018 9:20:50 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: 4(c)

Dear all,

I have a somewhat odd fact pattern on an Item 4 doc collection. It's clear that any document presented to the board of directors of a company is a "final" document. I have a deal where a PE firm has two designees to a portfolio company's board, so we are searching at the PE fund level whether any PE fund documents are responsive in addition to the portfolio company board materials (the portfolio company is making an add-on acquisition, and is its own UPE).

At the PE fund, there were multiple drafts of a few responsive PE fund documents circulated for comment to the creator's supervisors, who also in this case happen to comprise "the board" at the PE fund level. These were not intended to be board level documents but happened to be circulated to the board members (of which there are only 4, so the entire "board") but in connection with drafting of the final versions, not in connection with board presentations in the classic sense. This was because those board members are the document creator's supervisors. This to me is somewhat akin to the old "two hats" theory that used to apply to officer/directors on deal teams and diligence materials (which two hats theory I know is no longer really relied on by practitioners). In this case, if you treat these "work in progress" drafts as "final" board materials, we would need to submit multiple "work in progress" drafts between creator and supervisors, which would not represent board level materials/analysis.

Can we in this case submit only final board deck output that reflects the board-level analysis of the transaction?

Thanks so much!

[REDACTED]



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