

Verne, B. Michael

ITEM 4(c)

From: [REDACTED]
Sent: Thursday, April 17, 2008 1:54 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR Informal Advice

Dear Mike:

As we discussed a few days ago (and also a few weeks ago), we are preparing to submit a second HSR filing for a transaction that was already filed upon on April 27, 2007 and subsequently received early termination. The transaction has not closed because the matter is still being reviewed by the Pennsylvania Department of Insurance (as well as the Pennsylvania State Attorney General). Thus, under §803.7 the HSR clearance will expire in the end of May 2008. Accordingly, the parties will soon re-submit their respective HSR filings as required to renew clearance. The parties involved in this transaction are [REDACTED]

Since last year, [REDACTED] and [REDACTED] have formed 16 integration planning ("IP") teams and engaged a number of outside advisors to assist the companies in preparing for integration of their businesses after closing. Literally hundreds of employees from each company have been actively involved in this process, including many in senior management. Each IP team has two co-chairs; one from each company. Many of the co-chairs also qualify as officers for 4(c) purposes, although it certainly was not a requirement that a person be an officer in order to serve in the capacity as a co-chair. The co-chairs do not create much, if any, of the team's work product, but rather review the team's draft output as it becomes final, comment on it, provide directional guidance, and help in the determination of the work product that is presented to the full "Integration Planning Council" (IPC), which consists of the 16 Team Leads, the Chief Integration Officer, the Senior Integration Officers (SIOs), the Program Management Office (the "PMO", which is essentially support staff to the IP effort), one outside counsel for each party, and various [REDACTED] staff. Most of the work product is created by or under the direct supervision of the Team Lead (usually one per team), who most often are not officers or directors (although there are a few exceptions).

The 16 IP teams have as their primary output four "Deliverable Sets," DS1 through DS4, the Executive Summaries of which were presented to the full IPC and the Executive Steering Committee, consisting of the two CEOs and one Board member from each company. These four deliverable sets comprise close to 400 documents, culminating for each team in DS 4, which each company considers to be a "final" product." In preparing the Deliverable Sets the IP teams created hundreds of thousands of pages of work product and e-mails. In addition to the Deliverable sets, many of these interim documents are stored in an electronic storage room called eMerger (although drafts are not necessarily stored on eMerger, nor are any of the emails exchanged between team members).

The enclosed informal interpretation concludes that in certain instances documents created by or for an officer of the company do not qualify as 4(c) documents if they were created or reviewed by the officer in his or her capacity as a due diligence team member, rather than in the capacity as an officer of the company. (<http://www.ftc.gov/bc/hsr/informal/opinions/0503019.htm>) Similarly, in the case of [REDACTED], the officers involved as co-chairs and team leads were acting in their capacity as integration planning team members rather than as officers of the company. To that end, we are of the view that interim documents prepared or reviewed by the co-chairs and team leads leading up to the preparation of the Deliverable Sets are not 4(c) documents because the individuals involved were not acting in their capacity as officers. In addition, these materials are drafts of the final information included in the final Deliverable Sets. With respect to the integration planning materials, it would thus

4/17/2008

9

be our intention to provide only the subset of the approximately 400 documents that comprise the Deliverable Sets that otherwise meet the 4(c) criterion. We are seeking your advice in confirming this conclusion.

Regarding any additional documents created outside of the integration planning team process, the parties plan to conduct a search of all officers' and directors' files for such documents.

Please let us know if you need additional facts to flesh out any issues. Thanks in advance for your advice regarding this issue.

AGREE
BN
4/17/08

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