

4(c)

**Verne, B. Michael**

**From:** [REDACTED]  
**Sent:** Tuesday, May 20, 2008 4:45 PM  
**To:** Verne, B. Michael  
**Subject:** Informal HSR Advice

Mike,

We are seeking informal advice with respect to the scope of a 4(c) document collection that we are preparing to conduct. In this case our client is Seller, which will divest its interest of approximately 70% of the voting securities of Issuer to Buyer. The remaining 30% interest of Issuer's voting securities are publicly traded and will not be sold in connection with this transaction.

In November 2007, Seller announced that it planned to divest its shares in Issuer to whichever firm emerged as the winning bidder in an auction process. At the same time, Issuer undertook to work with Seller to explore the possible sale of the entirety of the shares of Issuer, including those that are publicly traded. Seller and Issuer retained two investment banking firms to prepare materials including an Offering Memorandum and Management Presentation, among other things. Over the next few months the two investment banking firms narrowed the field of bidders from over a hundred to one. In late March of this year, upon presenting the terms of the top bid to Issuer's Board of Directors, the Board declined to sell the publicly traded shares at the price that Buyer offered. Seller remained in negotiations with Buyer to sell only its approximate 70% interest in Issuer. At this time the structure and substance of the transaction changed from the purchase of 100% of Issuer by Buyer to the purchase of 70% interest in Issuer only from Seller.

Based on these facts, the filing parties are seeking advice regarding whether to include in the scope of the 4(c) search all materials that were prepared in contemplation of the sale of a 100% interest in Issuer, which date back through roughly last November, or to start the 4(c) search at the time that the transaction changed into the current structure that includes only the 70% interest to be purchased by Buyer directly from Seller.

Thanks in advance. Please let me know if you need more facts to give guidance on this issue or if you would like to discuss in more detail.

Best regards,

[REDACTED]  
[REDACTED]

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5/21/2008

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I don't believe that the change from 100% to 70% represents a substantive enough change in the transaction to say that it is a different transaction. I would take the search back to November.

BM  
5/21/08