

ITEM 4(c)

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, May 08, 2012 2:41 PM  
**To:** Verne, B. Michael  
**Cc:** [REDACTED]  
**Subject:** 4(c) Question

Dear Mike,

Thank you for the helpful Item 4(c) tip sheet that the PNO recently posted on the FTC website. I have a follow-up question about the implication of the tip sheet's guidance for board presentations that is relevant for a transaction I am working on.

Please consider the following four scenarios, each of which starts with a CEO receiving five separate power point decks for a board meeting. Each deck has been prepared by a different employee of the company.

- 1) Deck 1 discusses a potential sale of the company and includes 4(c) content. Decks 2-5 have no such content. CEO forwards the five slide decks to the board as separate attachments under a non-substantive cover e-mail.
- 2) Deck 1 provides an update of discussions with potential buyers but has no substantive 4(c) content. Deck 2, prepared as an ordinary course board briefing, discusses competitive conditions for the company's products but does not mention the sale of the company. Decks 3-5 have unrelated content. Again, CEO forwards the five slide decks to the board as separate attachments under a non-substantive cover e-mail.
- 3) Same as 1), but CEO combines the five presentations into a single slide deck and sends that to the board under a non-substantive cover e-mail. (By "combines," I mean that he puts one presentation behind another in a single slide deck, adding an agenda; he does not change any individual presentation).
- 4) Same as 2), but CEO combines the five presentations into a single slide deck and sends that to the board under a non-substantive cover e-mail.

My interpretation of the guidance as applied to these four scenarios is as follows:

- 1) Only deck 1 is responsive. See 4(c) tip sheet, p. 2, second bullet point.
- 2) None of the decks is responsive. Deck 1 was prepared for the transaction but has no substantive 4(c) content. Deck 2 is ordinary course and is being distributed as a stand-alone document.
- 3) The entire combined board presentation is responsive. See 4(c) tip sheet, p. 2, second full paragraph (integration of a 4(c) document into a larger document) and informal interpretation 0802014 (only board minutes, but not documents presented to the board, may be redacted without a claim of privilege).
- 4) The combined board presentation is not responsive, and neither is any of the stand-alone files. See 4(c) tip sheet, p. 2, second full paragraph (suggesting that the integration exception requires that ordinary course document be combined with at least one other document that, standing alone, would be 4(c)).

Do you agree?

Thank you very much in advance. If you have any questions, please don't hesitate to call.

AGREE -  
BM  
5/9/12