

801.12

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 Date: Tue, Apr 25, 2000 8:08 PM
 Subject: 801.12

Mike - I have another question for you on applying the fun formula in 801.12. I have a situation where X's articles state that the holders of Series A shares voting as a class elect 2 of 5 directors, the holders of Common voting as a class elect 2 of 5 directors, and the fifth director is elected upon the approval of (i) the holders of the majority of the A shares and (ii) the holders of Common Stock voting as a class. If Y just holds A shares, would I calculate Y's percentage as follows?

[(The A shares held by Y divided by all A shares outstanding) times (2 divided by 5)] plus [(the A shares held by Y divided by all A and Common shares outstanding) times (1 divided by 5)]?

I am concerned that application of the formula may not work in a case where the last director must be approved by the majority of the A voting as a class and the majority of the Common voting as a class. Strict application of the formula overstates Y's holdings in X because even if Y holds a majority of the A shares, Y cannot unilaterally elect the fifth director because a majority of the Common could veto his choice.

What do you think?

Thanks,
 [REDACTED]

ADVISED TO USE $\frac{1}{2}$ AS THE
 NUMERATOR IN THE RATIO FOR
 THIS DIRECTOR. IE: IF YOU
 HELD 100 OF THE 500 TOTAL
 SHARES OF CLASS A YOU WOULD
 CALCULATE AS FOLLOWS:

$$\frac{100}{500} \times \frac{2}{5} = 8\%$$

$$\frac{100}{500} \times \frac{1}{2} = 10\%$$

TOTAL PERCENTAGE
 IN CLASS A = 17%

NOVURA + HANCOCK
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4/25/00

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