

Ovuka Nancy

From: [REDACTED]
Sent: Friday, January 09, 2004 9:10 AM
To: Ovuka Nancy
Cc: [REDACTED]
Subject: HSR Interpretation

801.1 (F)

Happy New Year Nancy. I am hoping for your guidance on the following fact pattern:

Company X, is a cooperative owned by 12 individuals in roughly equal shares. X is hoping to reorganize with all of its members contributing their voting membership interests to Company Y (which is also a cooperative). The result will be that Company X will be wholly owned by Company Y.

I would like to argue that 16 CFR Section 802.30 exempts the transaction. My questions is whether the PNO would consider the voting membership interests to be "voting securities". Y's bylaws will provide in relevant part that:

"a) each member of Y will have a single vote at any meeting of its members and will be entitled to appoint two individuals to Y's board of directors. In connection with any matter pertaining to X as to which Y has a vote, each member of Y will be entitled to require Y to exercise one of its votes with respect to such matter in the manner that is directed by such member. Similarly, each member of Y will be entitled to direct Y as to the appointment of two individuals to X's board of directors. (** does the right to appoint members constitute the right to "elect" them)

b) On any liquidation or dissolution of Y, after all debts have been paid and all patronage capital has been deemed on a pro rata basis to the members and former members of Y, any remaining assets shall be distributed to Y's members and former members based on the historic partorage of each."

Thank you.

ADVISED THAT THESE
ARE NOT TREATED AS VLS.
APPEAR TO BE MORE LIKE
VOTING INTERESTS IN AN LLC.
N. OVUKA CONCURS.

[REDACTED]
[REDACTED]
p.s - I started talking to Mike Verne about this yesterday before I had the bylaws, and I understand that he is out of the office today.

[REDACTED] made the following annotations.

NOTICE TO RECIPIENT: THIS E-MAIL IS MEANT FOR ONLY THE INTENDED RECIPIENT OF THE TRANSMISSION, AND MAY BE A COMMUNICATION PRIVILEGED BY LAW. IF YOU RECEIVED THIS E-MAIL IN ERROR, ANY REVIEW, USE, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS E-MAIL IS STRICTLY PROHIBITED. PLEASE NOTIFY US IMMEDIATELY OF THE ERROR BY RETURN E-MAIL AND PLEASE DELETE THIS MESSAGE FROM YOUR SYSTEM. THANK YOU IN ADVANCE FOR YOUR COOPERATION.

1/13/04