

801.12

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, January 28, 2004 9:25 AM
To: Verne, B. Michael
Subject: Percentage of Voting Securities Held

Mike - I wanted to confirm a "percentage of voting securities held" question. I don't think it is directly covered by the rules, but I think the below analysis is the way to handle it under the rules.

X has two classes of shares: Series A and Series B.
X has 3 directors. Two are elected by Series A, voting as a class. One is elected by all shares (Series A and Series B) voting together.

Y holds 60 of the 100 shares of Series A shares. Y also holds 20 of 100 Series B shares.

I think the "percentage held" by Y would be:

1. $60/100 \times 2/3 = .396$ (39.6%), PLUS
2. $20/200 \times 1/3 = .033$ (3.3%)

For a total of 42.9%.

Assuming Y had filed for (under the old regime) and had exceeded the 25% threshold within a year of the expiration of the waiting period, I think Y can continue to buy shares (within the 5 year period) unless / until it would hold 50% of X's voting securities, using the formula set forth above. This seems like it has to be the answer, but I wanted to check because 801.12 does not seem to explicitly address a situation where one class of shares (here, Series A) votes for some directors as a class, and also votes for other directors along with other classes of shares.

As always - thanks for your help.

THIS IS THE CORRECT
CALCULATION.

B. Michael
1/28/04

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