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Verne, B. Michael

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From: [REDACTED]  
Sent: Wednesday, September 06, 2006 5:16 PM  
To: Verne, B. Michael  
Subject: Question

Hi Mike. I'm drawing a blank and need your help.

A and B propose to form Newco. A will contribute voting securities of C valued in excess of \$56.7 million and will take back 100% of the nonvoting securities of Newco. B will contribute \$100 and take back the one and only share of voting stock of Newco. Accordingly, A will hold most of the equity, but no voting securities of Newco. B will hold all of the voting securities of Newco, but virtually no equity. I understand that the formation of Newco will not require a filing even if the size of person test is satisfied because neither A nor B will hold voting securities of Newco valued in excess of \$56.7 million. I cannot recall, though, whether a secondary acquisition filing obligation can arise in the context of the formation of a joint venture corporation. As a result of its acquisition of the one and only share of voting stock of Newco, B will be deemed to hold the shares of C that A has contributed to Newco. These shares are valued in excess of \$56.7 million. If B and C meet size of person, does B have a filing obligation for its indirect acquisition of this minority interest in C?

Thanks.

YES - THIS IS A POTENTIALLY  
REPORTABLE SECONDARY  
ACQUISITION. N. OVOKA CONCURS.

*Brachler*

9/6/06

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