

Verne, B. Michael

801.1 (b)

From: [REDACTED]  
Sent: Wednesday, December 20, 2006 3:17 PM  
To: Verne, B. Michael  
Subject: question

Hi, Mike -

I'm hoping to get your thoughts on this situation. Company A and Company B are making cash investments in Newco; Newco will acquire Company C in a transaction that is reportable. Company A's contributions to Newco will result in it owning less than 50% of the voting securities of Newco, though Company B will own greater than 50% of Newco.

There is a term sheet that states that Company A and Company B will each have two directors (of a four member board) of Newco prior to closing. From and after closing, an investor's agreement will be in place giving neither Company A nor Company B a present contractual right to appoint half or more of the directors of Newco. Based on these facts, it appears that there are no reporting obligations of Company A because it holds less than 50% of the voting securities of Newco and although it controls Newco momentarily at the time of closing based on its right to appoint half of the directors, it is not crossing a notification threshold solely by virtue of its right to director appointment. Further, the right to director appointment changes upon closing.

Do you agree?

Many thanks (and happy holidays)!

[REDACTED]

*AGREE -  
mm  
12/20/06*

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