

Verne, B. Michael

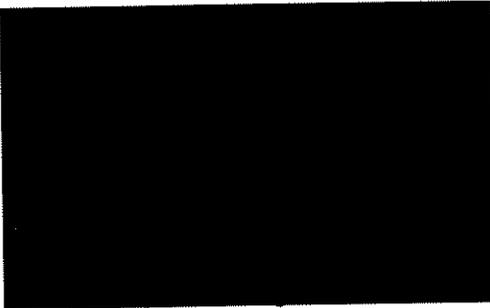
801.1(b)

From: [REDACTED]
Sent: Monday, April 02, 2007 7:54 AM
To: Verne, B. Michael
Subject: Some advice, please

I continue to be confused about what I think is a simple question.

X holds a minority of the stock of a corporation and through a contractual arrangement with another minority shareholder, has the power to vote the shares of that minority shareholder. Between his holdings and his contractual arrangement, X has the power to cast more than 50% of the votes for election of directors. X doesn't have any other ownership interest in the second shareholder's shares and thus doesn't beneficially own those shares. The contractual arrangement is a simple voting arrangement, allowing X to vote those shares whenever there is an election of directors. But X doesn't have a contractual power "presently to designate half or more of the directors," in the sense that X cannot remove and replace half or more of the directors at a time of his choosing. The voting arrangement is not an irrevocable proxy; either party may terminate it at will.

Does X control the issuer?



=====
=

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

=====
=

Unless the voting agreement gives the right to designate a majority of the board, which I think can be distinguished from the revocable right to vote 50% of the voting securities. The two tests for control of a corporation are having the contractual power presently to designate 50 percent or more of the directors or holding 50 percent or more of the outstanding voting securities. Having a revocable right to vote shares does not confer beneficial ownership, so the person who has that right does not hold the voting securities. Based on this, I don't think your scenario fits either prong of the rule.

BM
4/2/07