

Verne, B. Michael

From: [REDACTED]
Sent: Monday, April 30, 2007 3:07 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Question about "investment only" exemption

Mike

We had a question whether the following situation qualifies for an exemption from filing. It deals with the "investment only" exemption.

There is a corporate reorganization of a Bermuda company. As a result, one U.S. shareholder will obtain more than 10% of the shares that carry voting rights. However, under the by-laws of the Bermuda company, a U.S. shareholder can NEVER exercise voting rights that amount to more than 9.8% of the company's total voting rights. This by-law is, apparently, triggered by the tax-free status of Bermuda reinsurers and for that reason is unlikely ever to change.

The result is that this shareholder will never be able to vote more than 9.8% of the outstanding voting shares. He simply will never be able trigger the corporate control or influence concerns that were behind the 10%+ provision. He is not involved in management and therefore qualifies for the investment exemption on every other ground.

Since, as a matter of fact and law, he is a shareholder with a maximum of 9.8% in voting rights, it seems that he should be exempt from an HSR filing requirement.

We spoke with James who thought this sounded right but asked us to verify with you. We would appreciate your guidance.

[REDACTED]

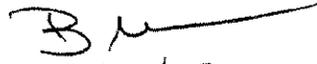
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The restricted voting rights are not the result of a contractual arrangement, they are contained in the bylaws of the corporation. This would potentially be an argument that as a practical matter the stock only represents 9.8% of the outstanding voting securities. However, Section 801.12(b) states "Whenever the act or these rules require calculation of the percentage of voting securities of an issuer to be held or acquired, the percentage shall be the sum of the separate ratios for each class of voting securities, expressed as a percentage." This leads me to the conclusion that if the percentage calculated under 801.12 exceeds 10% (which appears to be the case here), the solely for purpose of investment exemption would not be available.


4/30/07

M. BLUNO, K. BERG } K. WALSH CONCUR.