

801.12
801.1(b)

Verne, B. Michael

From: [Redacted]

Sent: Thursday, January 29, 2009 11:56 AM

To: Verne, B. Michael

Subject: Intraperson Exemption/Class Voting for Directors

Mike, I am analyzing whether a potential transaction meets the intraperson exemption and have the following question.

I understand that for the intraperson exemption to work, control must be under the first part of the control definition--for corporations, the holding of 50% or more of the voting securities. Contractual rights to designate directors are not sufficient.

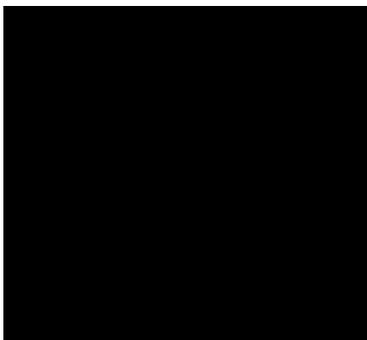
However, in the facts I've been given, I think control meets this test but wanted your thoughts. The subject company is a foreign entity (Dutch private company with limited liability) that has issued 3 classes of shares. Each share has one vote. The three classes have some distinctions in terms of rights to dividends/liquidation. Our client has the ability under the charter to make a "binding nomination" to appoint 2 out of 4 directors (this binding nomination may be undone by a 2/3 vote of all shareholders). In addition, in terms of numbers of shares of all classes, our client owns 450 million shares out of 900 million, or 50%. Calculating the percentage ownership under 801.12(b) also yields 50%. Our client is proposing to purchase the remaining 50% of the shares which are held by 2 separate holders (25% each).

First, it appears that the shares should be considered voting securities due to the rights in the charter to appoint directors. However, when there are class voting rights for directors in the charter, should we use 801.12(b) to calculate the percentage of shares held for purposes of the control definition in 801.1(b)(1)? Because the class voting rights are in the charter, is there no issue about control being under (b)(1) vs. (b)(2)?

Thank you for your time.

Regards,

AGEE
B
1/29/09



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