

Verne, B. Michael

From: [Redacted]  
Sent: Thursday, February 23, 2012 8:40 PM  
To: Verne, B. Michael  
Cc: [Redacted]  
Subject: Request for confirmation of our view

Mike:

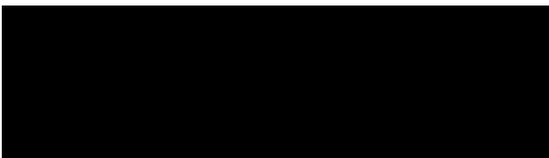
Here is the fact pattern I was hoping to discuss with you. We have a client, Mr. R, who currently controls Company A. Mr. R's has achieved control through a combination of holding Common Shares (shares representing approximately 40% of the voting power) and being granted irrevocable proxies by third parties (such irrevocable proxies representing approximately 25% of the voting power).

Mr. R will now be acquiring additional voting securities of Company A by way of an exercise of stock options that have been previously granted to him. Mr. R does not hold any non-voting convertible securities of Company A.

I am aware of the exemptions found in Section 7A(c)(3) of the Clayton Act, which exempts acquisitions of voting securities of issuers when the acquiring person already owned at least 50% of the shares prior to the acquisition. I am also aware of Rule 802.30, which exempts an acquisition of voting securities when the acquiring and acquired persons are the same person. . However these exemptions normally do not allow a control person to rely upon these exemptions when control is obtained through a combination of holding securities and having the contractual right to designate board members. We are aware that Informal Interpretation No. 48 contained in the ABA's Premerger Notification Manual (4<sup>th</sup> Edition) (which cites Informal Interpretation 0012005 dated December 8, 2000) supports the premise that reporting requirements are determined by the amount of voting stock that will be held by that person and not by whether that person has been given the right to vote the stock as a result of an irrevocable proxy or an agreement with others. Could you confirm that is still the current position of the PNO ?

With respect to an acquisition of voting securities of Company A by Mr. R, a filing would be required under the HSR Act with Mr. R reporting as both an acquiring and acquired party, assuming all applicable thresholds were met. Would you let me know if you agree with our analysis?

Acer  
BR  
2/22/12



\* \* \* \*

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulations, we inform you that any U.S. federal tax advice contained in this correspondence (including any attachments) is not intended or written to be used, and cannot be used for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.