

801.2  
802.21

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, July 17, 2012 2:52 PM  
**To:** Verne, B. Michael  
**Subject:** Question regard RSUs

Mike,

How should the following series of events be treated in determining when an acquisition is, or acquisitions are, made:

1. Officer is granted restricted stock units in his company that vest at a future date, but the RSUs include voting rights and rights to dividends at the time of the grant. The RSU cannot be sold until they vest.
2. If the officer elects to defer vesting for whatever reason (usually tax reasons), while deferred, the RSUs lose voting rights and the right to dividends, but do gain the right to dividend equivalents (essentially the cash equivalent to the dividends that would be paid had the vesting not been deferred). Since the RSUs have not vested, they cannot be sold.
3. At the end of the deferral period, the RSUs vest, and the officer gains voting rights, dividend rights, and the right to dispose of the shares.

As I understand the PNO's position, the grant of RSUs described in #1 is an acquisition of beneficial ownership in voting shares of the company. Would the deferral under #2 be considered a disposition / loss of beneficial ownership those voting shares, with the result being that when the RSUs vest after deferral, it is another potentially reportable acquisition, of essentially the same shares?

Thanks as always.

Regards,

[REDACTED]

[REDACTED]

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- 1) I agree that this is enough to constitute an acquisition of voting securities when the RSUs are granted.
- 2) If the vesting is deferred and the RSUs lose voting rights, they are no longer voting securities, but are convertible to voting stock when they eventually vest.
- 3) If Step 1 was filed for, as long as the vesting does not cross another threshold, the vesting would be exempt under 802.21

BR

7/17/12

K. WALSH CONCURS