

201.1 (b)

Verne, B. Michael

From: [REDACTED]
Sent: Monday, September 10, 2012 10:32 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: HSR question re: control

Hi Mike,

We are hoping to get your guidance on the issue of control of a corporate entity via board appointment rights.

A, B, C, & D (collectively, the "Investors") will collectively acquire approximately 65% of the voting securities of Company X, which is a non-public corporate entity, through a newly-formed corporate investment vehicle ("Newco"). Each of the Investors is its own UPE and none of the Investors will control Newco. Assume that the SOP test is met. Alternatively, B may invest in Company X through a separate blocker entity from Newco but will still be its own UPE and will hold less than 50% of the voting securities of Company X.

A will have the right to appoint two out five directors and a third director with the agreement/approval of C. Up to this point, based on these facts, A will not control Company X because it will not hold at least 50% of the voting securities and will not have a present contractual right to appoint 50% or more the board.

Company X will have two classes of directors with different voting power: one class of directors is entitled to one vote per matter, and the other class is entitled to five votes per matter. A will appoint the director who has 5 votes per matter and thus, will control a majority of the votes eligible to be cast by the board, despite the fact that it can only appoint 2/5 directors, because it can appoint the director with the higher voting power. Based on previous interpretations, however, A will not control the board of Company X because "enhanced voting rights attributed to a director do not affect the calculation of percentage of voting securities held in the corporation. Only the number of votes per share that vote for the election of directors are counted." See Informal Letter # 0704006.

Does this still represent the PNO's current position and if so, do you agree that Investor A will not control Company X?

Best regards,

[REDACTED]

[REDACTED]

AGREE -
[Signature]
9/10/12

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