

802.9

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, November 13, 2013 9:29 PM
To: Verne, B. Michael
Subject: Passive Investor - revised question

Mike -

Please disregard my earlier email, I received a few new facts from my client that are set out below. Our client (the "Fund") is a venture capital fund that currently holds approximately 1% of the voting securities of a private corporation, which is not currently profitable (the "Target"). The Fund would like to increase its investment in the Target to approximately 1.5%, which would bring the Fund's total holdings to just above the current \$70.9 size-of-the-transaction threshold.

The fund has no intention to acquire more than 2.5% (much less 10%) of the Target's voting securities because it has strict investment concentration limits that it cannot exceed; it has no intention to seek a board seat; it has no intention to solicit proxies; and it is not a competitor of the Target and has not invested in any competitors of the Target. The Fund plans to enter into an agreement with the Target that allows it, upon written request, to customary inspection rights of the Target's books, records and facilities.

One of the Fund's investors (who owns less than 20% of the Fund's partnership interests) has held a seat on the Target's board in his own individual capacity for over eight years, which was before the Fund was even launched. Thus, the Fund neither actively sought to have the investor appointed to the Target's board nor could the Target have solicited any input or approval from it before making the nomination. As consideration for the investor being one of the Fund's first investors, he has been granted a veto right over the Fund's investment decisions, but has no ongoing oversight over the Fund.

Do you agree that the Fund can avail itself of the investment-only/passive investment exemption?

Thanks,
[REDACTED]

Agree
Bm
11/14/13

U.S. Treasury Circular 230 Notice

Kw CONCURS

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