

801.12

Verne, B. Michael

From: [REDACTED]
Sent: Friday, January 03, 2014 2:33 PM
To: Verne, B. Michael
Subject: Calculating Percentage of Voting Securities

Mike--

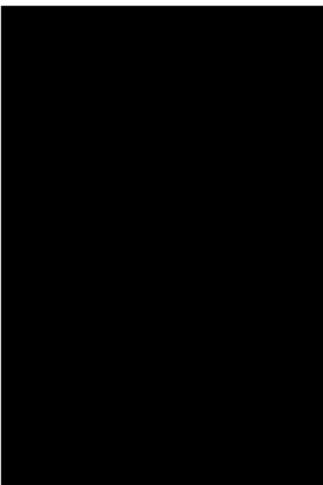
I am trying to determine the UPE of the acquiring person and would appreciate guidance regarding the calculation of the percentage of voting securities in the buyer.

The buyer has five classes of stock – Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, and Series D Preferred Stock. According to the certificate of incorporation:

1. The Series A Preferred Stock and Series B Preferred Stock voting together as a single class are entitled to elect one director.
2. The Series C Preferred Stock and Series D Preferred Stock voting together as a single class are entitled to elect two directors.
3. The Common Stock voting as a single class is entitled to elect one director.
4. The Common Stock and all Series of Preferred Stock voting together as a single class are entitled to elect all remaining directors.

I am not sure how I should apply 801.12 to a situation where two classes of stock are voting together to elect directors -- as is the case with #1 and #2 (and #4). Do I treat these situations where two (or more) classes are voting together as if they were one single, combined class for purposes of 801.12?

Thanks,



This electronic message contains information from the law firm of [REDACTED] contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at [REDACTED]

Yes - you would treat the multiple classes voting together as a single class for 801.12. So in your case, there are four classes of stock: A+B (1 director), C+D (2 directors), Common (1 director), and Common+A+B+C+D (remaining directors).

Brun ✓
1/6/14