

**Walsh, Kathryn E.**

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**From:** Verne, B. Michael  
**Sent:** Thursday, June 26, 2014 2:18 PM  
**To:** [REDACTED]  
**Subject:** RE: Distributions From Blind-Pool Funds

[REDACTED] We agree - the decision to distribute shares rather than cash is completely out of the control of the investor and at the discretion of the fund. We'd also be surprised if the distribution resulted in a greater than 10% holding in any particular company, so investment only is probably also available. That moots the other two points.

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**From:** [REDACTED]  
**Sent:** Thursday, June 26, 2014 11:07 AM  
**To:** Verne, B. Michael; Walsh, Kathryn E.  
**Subject:** Distributions From Blind-Pool Funds

Mike and Kate,

Can you help me out with some questions about distributions from blind-pool funds?

Natural Person Z is an investor (i.e., limited partner or non-managing member) in a number of private equity funds and venture funds. The funds make investments in various companies, including companies that are public or ultimately go public. Z receives distributions from those funds, which are normally in the form of cash. However, in some cases, at the fund's discretion, distributions may be paid in the form of securities of the underlying portfolio companies. Z does not know in advance the specific voting securities that may be distributed. Some of the distributions may exceed the \$50 million (as adjusted) threshold standing alone, but even if a distribution is below the threshold, it could result in Z crossing a threshold if Z already holds securities of the company whose securities are distributed.

Three questions:

1. We think that this situation is analogous to involuntary conversions, gifts, and other situations where the recipient of the voting securities does not control or cause the transaction by which the shares are transferred, e.g., <http://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/0410012>. Z is merely a passive investor in the funds, and does not control or direct the funds' decisions to make distributions of shares (indeed he doesn't control or direct the funds' decisions to invest in particular portfolio companies in the first place). Therefore the distribution of shares to Z should not be treated as an "acquisition" subject to HSR notification. Do you agree?
2. If these distributions must be treated as potentially reportable acquisitions, we understand the PNO has previously given informal advice that a HSR reporting obligation would not be triggered so long as Z takes prompt steps to divest himself of the shares. Can you confirm this is still the view of the PNO?
3. Again, if these distributions must be treated as potentially reportable acquisitions, in some situations, Z may not be able to sell the shares for a period of time, e.g., due to having material non-public information or a lock-up period. In that case, would it be sufficient if Z sold the shares as soon as legally permissible?

Thanks for your help,