

From: [Shaffer, Kristin](#)
To: [REDACTED]
Cc: [Berg, Karen E.](#); [Gillis, Diana L.](#); [Storm, Evan](#); [Whitehead, Nora](#)
Subject: RE: HSR Question - Voting/Non-voting Securities and Securities Held as a Result
Date: Tuesday, July 12, 2016 1:37:00 PM
Attachments: [image001.jpg](#)

[REDACTED]

Please see below. Let me know if you have additional questions.

Best regards,
Kristin

From: [REDACTED]
Sent: Monday, July 11, 2016 3:44 PM
To: Berg, Karen E.; Gillis, Diana L.; Shaffer, Kristin; Storm, Evan; Whitehead, Nora
Subject: HSR Question - Voting/Non-voting Securities and Securities Held as a Result

All, thank you in advance for your assistance with what I believe are two quick questions and perhaps a more complicated question.

Background:

Corporation X is looking to acquire 100% of the outstanding securities of Corporation Y, which is comprised of 7,500 voting shares and 28,000 non-voting shares. The approximate value being paid for such securities is \$147 million (including 20 million earn out), and we can assume that both the acquirer and acquired persons meet the size-of-person test. Corporation Y also wholly owns 4 separate corporations.

Corporation Y is also a regulated entity, which is required to hold a certain "net worth" in relation to certain premiums it receives from its customers. As a result, the parties are intending to include a threshold "net worth" (similar to a closing working capital) as a condition to closing. Thus, Corporation Y could payout excess capital as pre closing dividends. If they do not, they would ultimately be paid to Corporation Y as part of the post-closing purchase price adjustment.

Questions:

1. Voting Shares/Non-voting Shares:
 - a. Pursuant to a number of informal interpretations (e.g., 1204002), it appears that non-voting securities are not subject to the act, and would be excluded from the calculation of the transactions value. I had a hard time locating something in the regulations on this, but it may be as simple as the definition of voting securities. Is that correct, or have I missed a specific regulation or exemption somewhere?

Correct. Interpretation 6 in the Premerger Practice Manual provides more information.

- b. Assuming that the purchase price is allocated equally across shares (whether voting or non-voting), would the following be the correct approach? 7,500 voting shares plus 28,000 non-voting shares equals 35,500 outstanding shares. Approximately \$147,000,000 purchase price divided by 35,500 shares equals \$4,140.84 per share, which would mean Corporation X is only paying \$31,056,338 for the voting shares. Therefore, not reportable, subject to the questions below.

Correct.

2. Voting Securities Held as a Result:

- a. Do the voting securities held in Corporation Y's subsidiaries need to be taken into account or aggregated? Corporation X will be acquiring, albeit indirectly, these voting securities as a result of the transaction, but I would assume that these wholly owned subsidiaries would be covered by the value paid for Corporation Y's voting securities.

No. You are correct that wholly owned subsidiaries are not aggregated.

3. Pre Closing Dividends:

- a. Would the value of the pre-closing dividends be added to the Purchase Price? I would assume so because if not taken out, then the shareholders of Corporation Y would receive this value as part of the purchase price adjustment, but it may be viewed more as paying cash for cash.

Yes, this should be included in the purchase price.

Thank you for your assistance, and please let me know if you have any additional questions or need additional information.

