

Haynes, Lanea

From: Berg, Karen E.
Sent: Wednesday, October 18, 2017 5:01 PM
To: Gillis, Diana L.
Subject: FW: Non-Voting Securities Question

From: Berg, Karen E.
Sent: Thursday, September 14, 2017 2:50 PM
To: [REDACTED]
Subject: RE: Non-Voting Securities Question

[REDACTED]
In the transaction you describe, you need only value the voting securities of Corporation X to determine the size of transaction.

Karen

From: [REDACTED]
Sent: Tuesday, September 12, 2017 6:42 PM
To: Berg, Karen E.
Subject: Non-Voting Securities Question

Karen—

This may be a very rudimentary question and, if so, I apologize for clogging your email inbox. My client is in discussions to acquire all of the capital stock of Corporation X. The capital stock of Corporation X is divided between 100 Voting Common Shares and 900 Non-Voting Common Shares. I know that the acquisition of non-voting securities is disregarded, so the value of those shares should not be included in determining whether the size-of-transaction test has been satisfied.

However, Corporation X owns 99% of the membership interests in LLC Y, and my client will also acquire the remaining 1% of the membership interests in LLC Y. As a result of the acquisition of all of the capital stock of Corporation X and the acquisition of the remaining 1% of membership interests in LLC Y, my client will own (directly) all of the capital stock of Corporation X and (directly or indirectly) all of the membership interests in LLC Y.

It appears as though, if the non-voting common shares are removed as exempt, then, based on the FMV of the remaining items being acquired (the voting common shares of Corporation X and the 1% membership interest in LLC Y), the SOT threshold will not be satisfied. I believe that this is the correct HSR analysis (Informal Interpretation #1607003 seems to support this conclusion). Is that right? I am seeking confirmation, since if my client had instead directly acquired all of the membership interests in LLC Y, this transaction would have satisfied the SOT threshold, and I believe that Corporation X may simply be a holding company.

Thank you for your time.

Best regards,