

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Wednesday, March 13, 2019 2:46 PM
To: Walsh, Kathryn E.; Biagioli, Kimberley; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora
Subject: FW: 7A(c)(10)

From: Berg, Karen E.
Sent: Wednesday, March 13, 2019 2:46:21 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 7A(c)(10)

[REDACTED] the closings would need to be virtually simultaneous to use 7A(c)(10). 1-2 weeks between them is definitely too long.

Karen

From: [REDACTED]
Sent: Tuesday, March 12, 2019 9:07:22 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: 7A(c)(10)

Dear All –

We have a question concerning the c(10) per centum shareholding exemption. Company and its current investors have entered into an SPA. Pursuant to the SPA, the company intends to issue a Series D round of preferred stock. All current investors plan to participate on a pro rata basis. The Series D will be voting stock.

All of the current investors plan to close on the same day, except one investor who is required to call additional capital for the closing. This investor will close approximately 1-2 weeks after the other current investors close on the Series D.

Our question is whether in this circumstance the investors can rely on the c(10) exemption since their per centum shareholding will not increase once all of the investors close. We think the fact that the investors will all acquire the Series D shares pursuant to a single SPA means that we can analyze this as a unified transaction, and conclude it is exempt since all of the current investors will receive allocations of the Series D shares strictly on a pro rata basis. None of the investors will increase their per centum shareholding once the Series D round is closed. We do not believe the fact that one investor must delay its closing means that we need to analyze this as two separate events (the first closing when most of the current investors will acquire the Series D shares, and the second closing when the last investor will acquire its Series D pro rata allocation).

Please let us know if you agree with this analysis.

Thanks very much,

[REDACTED]

[REDACTED]