

Sheinberg, Samuel I.

From: Sheinberg, Samuel I.
Sent: Friday, May 21, 2021 4:32 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Application of 7A(c)(10)

We agree that 7A(c)(10) applies to Investor 1.

Have a good weekend.

Sam

From: [REDACTED]
Sent: Friday, May 21, 2021 2:09:59 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: Application of 7A(c)(10)

Dear PNO Team,

We are looking at a scenario in which Issuer is raising capital through issuing new voting securities to multiple investors, all of which executed a single purchase agreement. One investor (Investor 1) is a current non-controlling shareholder, holding 2% of the outstanding voting interests, that has a right to participate up to pro rata in this financing to avoid dilution, but has decided to invest slightly less than its pro rata share. After closing, Investor 1 will hold voting securities with an aggregate value exceeding the size of transaction, but its percentage of outstanding voting securities will decrease to 1.9% as a result of the dilution from the other investors' acquisitions of the new securities. Unlike the other investors, however, Investor 1 has a contribution-call requirement that results in its closing being slightly delayed in relation to the other investors. When the other investors close prior to Investor 1, Investor 1's shares will be temporarily diluted to 1.8% of the outstanding voting securities of Issuer. Then, about 2 weeks after the other investors close, Investor 1 will close. Thus, because of Investor 1's administrative governance issue causing a delay, its percentage of outstanding voting interests of Issuer will temporarily decrease .2% and then rise .1%, which is still less than its current holding after closing.

One Informal Opinion appears to address whether 7A(c)(10) can apply to a temporary increase of percentages held by investors that closed in advance of an investor with a delayed closing (see 1903001); however, we do not think the PNO has addressed the situation as described for Investor 1: where at all times, Investor 1 will hold less than it currently holds, but because of an administrative issue (the contribution-call requirements), its percentage will first temporarily decrease .2% and then rise .1%, which will still be below its current holding. The text of 7A(c)(10) seems to substantively address just this situation (i.e., the acquisition of voting securities with no per centum increase to avoid dilution). Can the PNO confirm whether 7A(c)(10) is available?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#US
