

Verne, Michael

From: [REDACTED]
 Sent: Wednesday, July 16, 2003 3:47 PM
 To: Verne, Michael
 Subject: HSR Question

Hi Mike. Further to my voice mail message, please call me to discuss "control" in the following circumstances:

"A" is a closed corporation that does not have a board of directors. Accordingly, the typical way of calculating percentage of voting securities does not apply. There are 4 shareholders. Shareholder 1 owns 50% of the outstanding number of shares; Shareholder 2 owns 25%; Shareholder 3 owns 1 share less than 25% but has an irrevocable proxy to vote one additional share so its voting power is 25%; Shareholder 4 owns the one share that Shareholder 3 has the irrevocable proxy to vote.

Many matters require an 80% vote to pass. Others require majority. In the event of a 50/50 tie, Shareholder 4 can serve as a tie breaker or can choose not to in which case the proposed action fails.

My question is -- does Shareholder 1 (the holder of 50% of the outstanding shares) control "A"?

Thanks,

[REDACTED]

ADVISED THAT SINCE THERE IS NO BOARD OF DIRECTORS, THE SHARES ISSUED ARE NOT VOTING SECURITIES. THEREFORE, THE EQUITY TEST OF CONTROL (LIKE PARTNERSHIPS) SHOULD BE APPLIED. NIQUKA CONCURS.

B. Michael [Signature]
 7/16/03