

Verne, B. Michael

802.31

From: [REDACTED]
Sent: Wednesday, March 30, 2005 4:57 PM
To: Verne, B. Michael
Subject: convertible notes

Hi Mike,

May I run another filing question by you? This question relates to the acquisition of senior secured convertible notes. We are trying to determine whether the acquisition would be considered the acquisition of a convertible voting security that is exempt under Rule 802.31, or alternatively the acquisition of a voting security with the present right to vote for directors that is reportable.

Our client is purchasing senior secured convertible notes of Company A valued at approximately \$150m. As the deal is currently being discussed, in the note purchase agreement, pursuant to which our client is purchasing the convertible notes, our client will receive the contractual right, pursuant to the note purchase agreement, to appoint 2 out of 7 members of the board of directors of Company A. This contractual right to appoint directors is contained in the note purchase agreement and not in the indenture which, for the most part, governs the terms and conditions of the convertible notes.

I am struggling to determine whether these convertible notes would be considered convertible voting securities as the convertible notes and related indenture don't themselves enable our client to vote for the directors of Company A. The rights are granted in the separate note purchase agreement.

Do you believe that the acquisition of the convertible notes together with the rights granted in the note purchase agreement would be considered a reportable transaction? Would your analysis differ if the rights granted in the note purchase agreement granted only the right to nominate 2 out of 7 members of the board of directors of Company A if there was also a voting agreement pursuant to which shareholders of Company A agreed to vote their shares for the nominees proposed by our client?

We may need to provide you with additional information but I wanted to get your impressions based on what we know from the corporate team at this time.

Thanks again for your help,
[REDACTED]

ADVISED THESE ARE
NOT VOTING SECURITIES
J. Michael
3/30/05

[REDACTED]

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