

Verne, B. Michael

20.1 (b)

From: [REDACTED]
Sent: Thursday, November 03, 2005 1:34 PM
To: Verne, B. Michael
Subject: HSR questions

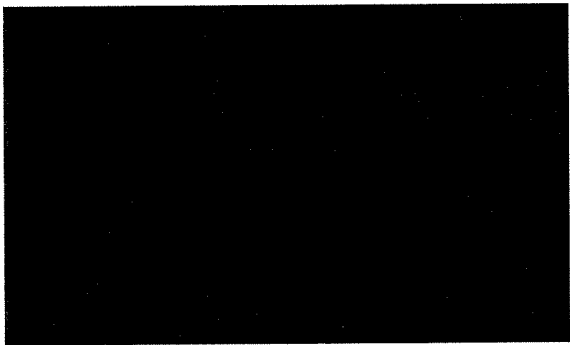
There are a couple of related questions on which I've long been confused.

I understand that if a person "acquires" (through voting rights agreements) the power to cast a majority of the votes for election of directors of a corporation, that isn't by itself enough to constitute a potentially reportable acquisition, because the voting power alone is only one indicium of beneficial ownership. — YES

But do you view a person that has such voting power as controlling the issuer, even if he doesn't beneficially own a majority of the stock? And if the person controls the issuer, is that person viewed as holding all of the issuer's assets (even though he may not have acquired them). My understanding is that the PNO position is "yes" to all of this. — YES

Here's where I'm confused. Is the right to vote more than half the shares the same thing as (or different from) a "contractual power presently to designate" half or more of the directors? I have often explained to clients that control by "contractual power" meant the power to remove and replace at least half the directors at any time. If that's right, is it different from the right to vote more than half the shares? — SAME

I dimly recall discussions about whether the power to vote more than half the shares might not constitute control under particular factual circumstances, e.g., staggered terms of directors that would prevent the voting power from being effectively exercised "presently" with respect to half or more of the directors. Is that simply a gloss on whether the "contractual power" has the appropriate characteristics, or am I mixing together a couple of different concepts?



B. Michael
11/3/05

[REDACTED] made the following annotations.

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