

Verne, B. Michael

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From: [REDACTED]
Sent: Friday, February 03, 2006 9:56 PM
To: Verne, B. Michael
Subject: Question

Hi Mike. I hope that you are well. I'm hoping you can help me out in determining the appropriate filer configuration for a deal that a client is considering.

Company A owns approximately 10% of the voting securities of Company B and Company C. Individual D has a proxy to vote Company A's shares in Companies B and C. Company A also owns convertible nonvoting securities in a company currently controlled by Individual D ("D's Corp"). D's Corp owns approximately 44% of the voting securities of Companies B and C. D's Corp has no other assets. Company A intends to convert its nonvoting securities in D's Corp to voting securities and thereby acquire control of D's Corp. This would be a simple analysis for me if it weren't for the proxy. If there were no proxy, I would conclude that the primary acquisition (i.e., the conversion of the nonvoting securities) was not reportable, and that a filing was required for the secondary acquisitions (assuming, of course, that the jurisdictional tests were satisfied). I am a bit perplexed by how the proxy may alter things. Does the proxy to vote 10% of the Company B and C voting securities coupled with the direct ownership of 44% of the voting securities, make Individual C the UPE of Companies B and C such that the reportable event is Company A's acquisition of 50% or more of the voting securities of D's Corp rather than the secondary acquisition of control of Companies B and C?

Thanks,

[REDACTED]

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The primary acquisition of D's V/S by A
is exempt. Secondary acquisitions of
V/S of B & C are potentially reportable

Becker

2/3/06