

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Friday, October 2, 2020 4:25 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora
Subject: FW: Section 7A(c)(10) / High-Vote & Low Vote Shares

From: Musick, Vesselina
Sent: Friday, October 2, 2020 4:25:08 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Section 7A(c)(10) / High-Vote & Low Vote Shares

Confirmed.

From: [REDACTED]
Sent: Thursday, October 1, 2020 4:00:26 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Section 7A(c)(10) / High-Vote & Low Vote Shares

PNO Team,

I wanted to confirm the availability of Clayton Act Section 7A(c)(10) as an exemption in a scenario involving a shareholder's conversion of high-vote shares to low vote shares at the same time the shareholder acquires other high-vote shares.

Assume a company has two classes of shares: Common A, which is publicly-traded, and Common B, which is not publicly-traded but which can be converted to Common A at the shareholder's request. Both Common A and Common B shares participate in the election of all company directors, but Common A shares have one vote per share, and Common B shares have 10 votes per share.

Certain Common B shareholders hold options to acquire additional Common B shares. If a Common B shareholder exercises its option to acquire additional Common B shares, but at the same time converts a sufficient number of its currently held Common B shares to Common A shares, thereby reducing its voting percentage, would the transaction be exempt under Section 7A(c)(10)?

As a very simple example, assume that there are 1000 votes available, based on there being 10 Common B shares outstanding, and 900 Common A shares, and assume all the Common B are held by a single shareholder, Shareholder X. Based on its holdings, Shareholder X's voting percentage would be 10%. Please also assume all transaction size and size of person thresholds are met.

If Shareholder X exercised options to obtain three more Common B shares, but at the same time converted four of its current Common B to Common A shares, Shareholder X's voting percentage would go down. After that transaction Shareholder X would have a total of nine Common B shares, and because of the conversion of the shares it already held, would also have four Common A shares. So post transaction, Shareholder X would have 94 votes, out of a total number of 1004 available votes. Shareholder X's voting percentage would now be 94/1004, or 9.4% -- dropping just slightly.

Because the shareholder's "per centum share of outstanding voting securities" has decreased, I think Section 7A(c)(10) exempts it from HSR notification requirements, but was hoping you can confirm.

[REDACTED]

[REDACTED]