

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Friday, April 13, 2018 11:01 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Whitehead, Nora; Davis, Alpa D.
Subject: FW: 801.12 Question

From: Shaffer, Kristin
Sent: Friday, April 13, 2018 11:00:43 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 801.12 Question

[REDACTED]

Assuming that all Series A Preferred Stock holders vote for two directors, we agree with your analysis. The fact that those directors need to receive 75% of the vote, rather than a simple majority, does not change the math.

Best regards,
Kristin

Kristin Shaffer

Attorney
Premerger Notification Office
Federal Trade Commission
202-326-3434 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Wednesday, April 11, 2018 10:58 AM
To: [REDACTED]
Subject: 801.12 Question

All,

We are seeking guidance on how to apply the Section 801.12 formula to the following facts.

Company X has four authorized directors elected as follows.

- a. Two directors are elected by the holders of **at least 75%** of X's Series A Preferred Stock voting as a class on an as-converted to Common Stock basis.
- b. Two directors are elected by the holders of a majority of X's Common Stock voting as a class.

No stockholder holds at least 75% of X's Series A Preferred Stock.

Assume Stockholder Y holds 30% of X's Series A Preferred Stock and 10% of X's Common Stock. How would we calculate what percentage of X's voting shares Stockholder Y holds under Section 801.12? Would it still be [30% times 2/4] plus [10% times 2/4]?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]