

## Sheinberg, Samuel I.

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**From:** Sheinberg, Samuel I.  
**Sent:** Thursday, April 15, 2021 1:43 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Query regarding 802.51(b)(1) Exemption

[REDACTED]

In your fact pattern, control is determined by the percentage of voting securities that is held.

Sam

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**From:** [REDACTED]  
**Sent:** Wednesday, April 14, 2021 5:04:29 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Query regarding 802.51(b)(1) Exemption

Dear all,

We are writing to confirm whether “including all entities controlled by the issuer” in the 16 C.F.R. § 802.51(b)(1) exemption includes entities controlled by virtue of Board appointment rights. We understand from prior guidance from the PNO that to “confer control” in the same provision means that control must be conferred by the acquisition of 50% or more of voting securities, and not the right to appoint 50% or more of the Board. See, e.g., Premerger Notification Practice Manual (5th Ed.) Interpretation 161; Informal Interpretation #050323 (June 30, 2010) (<https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/0503023>). The language of 802.51(b)(1) is reproduced below for ease of reference:

The acquisition of voting securities of a foreign issuer by a foreign person shall be exempt from the requirements of the act unless the acquisition will confer control of the issuer and the issuer (*including all entities controlled by the issuer*) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) having an aggregate total value of over \$50 million (as adjusted); or made aggregate sales in or into the United States of over \$50 million (as adjusted) in its most recent fiscal year.”

In this instance, we have a foreign acquirer A acquiring 95% of the shares of acquired entity B. B’s U.S. sales are minimal and it has no U.S. assets, but holds a 45% minority stake in U.S. entity C. However, B has the right to designate 50% of the Board of Directors of C. Please advise whether C would be considered an “entit[y] controlled by the issuer” for purposes of applying this exemption.

[Redacted]

[Redacted]

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[Redacted]

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[Redacted]

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[Redacted]

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