

Attorneys at Law

Rule 801.1(b)  
Control

Re: 15 CFR 801.1(b) - Control by Designation and the Difference  
Between Designation and Nomination

conversations concerning the distinction between "designating" and "nominating" directors

Facts

has the right to "nominate" three of the five directors of the Company on acquired letter to a

become relevant since that board has been succeeded.

The shareholder agreement also provides that in the event of a vacancy on the board, the party who nominated the departed director "shall nominate a replacement and the Shareholders shall vote their shares of Capital Stock of the Company to elect the individuals so nominated to fill

Mr. A owns less than 50% of the total outstanding voting securities of the Company.

Whether Mr. A has the "contractual power presently to designate 50 percent or more of the directors of a corporation..." within the meaning of Rule 801.1 (b) (2), by virtue of the above shareholder agreement?

because he has the power to nominate directors and the shareholders are contractually bound to vote for his nominations.

Notification Office's ("PNO") restriction on designation by comparing the above facts to a

Because Mr. A has the present right to designate three of the five directors of the Company, Mr. A controls the Company, pursuant to the definition of "control" in Rule 801.1 (b).

I hope that this letter accurately summarizes the advice we discussed on February 3<sup>rd</sup> and 4<sup>th</sup>. If I