

Question 107.01

Question: An investment advisor represents several major shareholders of an issuer that is contemplating a rights offering. The major shareholders beneficially own, in the aggregate, more than five percent of the issuer's Section 12 registered voting class of equity securities and retained the investment advisor to persuade the issuer to revise or drop the offer. Would such an arrangement result in the formation of a group under Section 13(d)(3) ~~and corresponding Rule 13d-5(b)~~ by the major shareholders that engaged the investment advisor?

Answer: Yes, the major shareholders have formed a group under Section 13(d)(3) ~~and Rule 13d-5(b)(1)~~ because they ~~have agreed to act together~~ acted as a group for the common purpose or goal of holding their securities. The major shareholders' ~~agreement~~ joint decision to retain an investment advisor in a collective attempt to gain influence over a management decision with respect to a rights offering accordingly requires that the security holdings of the major shareholders be aggregated and reported on a Schedule 13D. A shareholder will cease to be a member of the group when it no longer ~~agrees to act together~~ acts as a group with the other group members for the purpose of holding the equity securities of the issuer. ~~See Exchange Act Section 16 and Related Rules and Forms C&DI 110.02 at <http://www.sec.gov/divisions/corpfin/guidance/sec16interp.htm>. [Sep. 14, 2009 July 11, 2025]~~