

Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, September 8, 2021 10:46 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Request for Informal Guidance - Rule 801.1(c)(4)

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Wednesday, September 8, 2021 10:46:15 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Request for Informal Guidance - Rule 801.1(c)(4)

[REDACTED]
Based on these facts, Settlor controls.

Best regards,

Kristin

Kristin Shaffer

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Friday, September 3, 2021 2:01 PM
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Request for Informal Guidance - Rule 801.1(c)(4)

This is a request for informal guidance regarding whether the power of a settlor of a trust to reacquire the trust principal by substituting other property could be considered a reversionary interest for purposes of HSR regulations and determining whether a trust is its own UPE.

The following are the relevant provisions of the applicable Trust Agreement:

Paragraph Fourth of the Trust Agreement provides: "Anything herein to the contrary notwithstanding, no interest in the income or principal of this Trust shall remain in or revert to Settlor or his estate under any circumstances. Settlor shall not be considered an heir of any beneficiary hereunder as to any property held hereunder. Settlor shall never be a Trustee or Co-Trustee hereunder."

Paragraph Fifteenth of the Trust Agreement provides: "Notwithstanding any other provisions of this Deed of Trust, Settlor shall have the power to reacquire the Trust principal by substituting other property of an equivalent value at any time without the approval or consent of any fiduciary hereunder. The power granted to Settlor under this Paragraph FIFTEENTH shall be exercisable solely in a non-fiduciary capacity and without any fiduciary duty to any beneficiary hereunder with respect to its exercise or non-exercise."

Pursuant to Paragraph Fourth of the Trust Agreement set forth above, the Settlor would not appear to retain a reversionary interest in the corpus of the trust. However, we wanted to confirm that the FTC would not interpret the power to reacquire trust principal by substituting other property as creating a reversionary interest for HSR purposes. Could you please confirm.

Thank you for your consideration.

[REDACTED]

[REDACTED]

