

Sheinberg, Samuel I.

From: Sheinberg, Samuel I.
Sent: Wednesday, July 26, 2023 7:42 AM
To: [REDACTED]
Cc: HSRHelp
Subject: RE: Request for Informal Interpretive Advice

[REDACTED]

We agree with your analysis.

Sam

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Monday, July 24, 2023 7:42 PM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>
Subject: FW: Request for Informal Interpretive Advice

From: [REDACTED]
Sent: Monday, July 24, 2023 7:42:17 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Request for Informal Interpretive Advice

All,

We have the following request for informal interpretive advice relating to the ultimate parent entity (“UPE”) of a trust.

S is the settlor of a trust. The trust is irrevocable. S has no reversionary interest in the corpus of the trust. S designated the current trustee and a successor trustee of the trust in the trust document. S does not have the right to remove and replace the trustee or the successor trustee of the trust or the right to appoint additional future trustees of the trust.

S’s spouse (“Spouse”) has the right to remove the trustee but does not have the right to replace the trustee. If Spouse is unwilling or unable to remove the trustee, then the eldest living descendent of S has the right to remove the trustee but does not have the right to replace the trustee.

In the event both the trustee and the successor trustee are removed, the trust document does not give any person the right to replace them. The trust document does not contain a provision for the appointment of a trustee in this situation. The parties would need to go to court to have a trustee appointed in such circumstances.

The trust document provides that (a) a trustee may appoint a successor trustee if a specific successor trustee has not been named to succeed the serving trustee; and (b) a serving trustee may appoint a co-trustee at any time when only one trustee is serving.

Based on the foregoing, it is our understanding that the trust is its own UPE since (a) the trust is irrevocable; (b) S did not retain a reversionary interest in the trust's corpus; and (c) no person has the contractual power presently to remove and replace the trustee (or 50% or more of the trustees if there is more than one trustee). As a result, the assets comprising the corpus of the trust are held by the trust. See Interpretation Nos. 12, 13 and 14 of the Premerger Notification Practice Manual (Fifth Edition).

Please confirm our understanding that the trust is its own UPE and that it holds all of the assets comprising the corpus of the trust.

We appreciate your prompt attention, cooperation and assistance.

Very truly yours,

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