

Sheinberg, Samuel I.

From: HSRHelp
Sent: Monday, April 22, 2024 5:31 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter
Subject: FW: Trust UPE Question

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Monday, April 22, 2024 5:31:09 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Trust UPE Question

[REDACTED]

[REDACTED]

So long as Trustee One's rights stem from his role as a trustee and are not granted to him in his personal capacity, Trust is the UPE.

Best regards,

Kristin

Kristin Shaffer

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Thursday, April 18, 2024 12:06:57 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Trust UPE Question

Dear PNO,

We have a transaction in which a Family Trust holds in excess of 50% of the voting securities of Corp X. The trust is not revocable and the Settlor (deceased) does not have a reversionary interest. No one person has the contractual power to remove and replace 50% or more of the trustees of the Trust. As a result, the Trust holds the corpus of the Trust and is UPE of Corp X under 801.1(c)(3) and 801.1(b)(2).

Trustee One and Trustee Two, each of which are Settlor's sons, are Trustees of the trust. The Trust provides that as long as Trustee One is serving as a Trustee he will have the sole and exclusive right to vote all shares of stock or other ownership interests of any nature in any corporation, partnership, company or other type of entity in which the Settlor and any of the Settlor's descendants collectively own (directly or indirectly such as through trusts) ten percent or more of the equity interests or ten percent or more of the voting or managerial rights.

Do you agree that the Trust is the sole UPE of Corp X, and Trustee One is not also a UPE of the Trust by virtue of Trustee One's right to vote in excess of 50% of the shares of stock of Corp X pursuant to the Trust? Please see below excerpt from PNPM #14, 5th ed.

Absent this contractual power [the power to designate 50 percent or more of the trustees], a trustee who holds voting power with respect to stock held by the trust does not control the trust *or the issuer*, even if the trustee's voting power covers 50 percent or more of the issuer's outstanding voting securities.

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[Redacted text block]

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