

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Thursday, January 23, 2025 10:39 AM  
**To:** HSR Auto Forward List  
**Subject:** FW: UPE

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**From:** Shaffer, Kristin  
**Sent:** Thursday, January 23, 2025 10:39:21 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp  
**Subject:** RE: UPE

Since A continues to hold 50% or more of the voting securities of S, it is the UPE.

Best regards,

Kristin

**Kristin Shaffer**

Attorney

Premerger Notification Office

Federal Trade Commission

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**From:** [REDACTED]  
**Sent:** Tuesday, January 21, 2025 1:22:02 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp  
**Subject:** UPE

[REDACTED]

Dear Sir/Madam:

I have a client, S Inc., that used to have 6 corporate shareholders, with no one shareholder owning more than 25%. At that time, S, Inc. would be considered its own UPE. Three of the shareholders merged and thus S, Inc. now has 3 shareholders, A, B and C. Post its merger, A owns 60+% of the common shares of S, Inc.

Because it was never the intent of the shareholders that any one truly control S, Inc., they revised the by-laws to reflect that only a simple majority of the Board is required for many actions, but a super majority (70%) is required for:

- (1) Any change, modification or amendment to S, Inc.'s Articles of Incorporation, Bylaws or Shareholder Agreement;
- (2) The merger or consolidation of S, Inc.;
- (3) The division of S, Inc. into two or more companies;
- (4) The voluntary dissolution S, Inc.;
- (5) The sale, lease, exchange or other disposition of more than 50% of the assets of S, Inc.;
- (6) Any joint venture with any other business(es) or entity(ies) where S, Inc. would have 50% or less of the voting control in such joint venture;
- (7) The acquisition by S, Inc. of all or substantially all of the assets of another business or entity; and
- (8) Hiring, evaluation, and discharge of the President and Chief Executive Officer.

Under these circumstances, who would be the UPE of S, Inc.? S, Inc. or A?

Many thanks.

[REDACTED]

