

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, October 20, 2022 2:18 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: UPE with irrevocable proxy

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Thursday, October 20, 2022 2:17:56 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: UPE with irrevocable proxy

[REDACTED]
We agree that Corporation B remains a UPE pursuant to Rule 801.1(b)(1)(i) even though there is a proxy in place. The parties should also analyze whether any other person has control, either under 801.1(b)(1)(i) or 801.1(b)(2).

Best regards,

Kristin

Kristin Shaffer

Attorney
Premerger Notification Office
Federal Trade Commission
202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Thursday, October 20, 2022 10:35:58 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: UPE with irrevocable proxy

Hi PNO:

Our client is Corporation A. Corporation B holds over 50% of the voting securities of Corporation A. However, Corporation B signed a voting agreement. Under the terms of the voting agreement, so long as Corporation B holds greater than x% (x is less than 50) of the voting securities of Corporation A, Corporation B irrevocably appoints a proxy to vote the voting securities held by Corporation B in excess of x%. By the terms of the agreement, the proxy will vote the voting securities pro rata with Corporation A's other shareholders.

Can you please confirm it is PNO's position that, in this scenario, notwithstanding the existence of the voting agreement, Corporation B is the UPE of Corporation A by virtue of retaining beneficial ownership of over 50% of Corporation A's voting securities?

Thank you very much.

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