

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, November 23, 2021 10:06 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora
Subject: FW: UPE Question [IWOV-LAWDOCS.FID2056334]

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Tuesday, November 23, 2021 10:05:32 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: UPE Question [IWOV-LAWDOCS.FID2056334]

[REDACTED]
Pursuant to Rule 801.1(b), any person that has the right to designate (remove and replace) 50% or more of the trustees controls the trust.

Pursuant to Rule 801.1(c)(3), settlors control revocable trusts as well as irrevocable trusts in which they retain a reversionary interest.

You must look at the trust to see if any person, as defined in Rule 801.1(a), meets the criteria above. If none do, then the Trust is the UPE of the LLC.

Best regards,

Kristin

Kristin Shaffer

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From: [REDACTED]
Sent: Monday, November 22, 2021 7:53 PM
To: Musick, Vesselina <vmusick@ftc.gov>
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: UPE Question [IWOV-LAWDOCS.FID2056334]

Analysis:

1. Section 801.1(a)(1) defines *person* as “an ultimate parent entity and all entities which it controls directly or indirectly.”
2. Section 801.1(a)(2) includes both a *trust* and a *natural person* as an entity.
3. Section 801.1(a)(3) defines an UPE as an entity not controlled by another entity.
4. Section 801.1(b) includes in the definition of *control* holding more than 50% of the voting securities of an issuer.
5. Section 801.1(c) provides an example #3 for *hold* and states that (except for certain exceptions that are not applicable) a trust shall hold all voting securities constituting the corpus of the trust.
6. Our client (a group of LLCs) is owned by a Trust. An individual is both the beneficiary and the trustee of the Trust. The beneficiary/trustee’s brother created the trust as grantor. The beneficiary/trustee has the sole authority to manage the group of LLCs.

Question precluding arriving at a conclusion:

Is the Trust or the beneficiary/trustee the UPE of the group of LLCs (the acquired person)?

Please confirm. [REDACTED]

From: Musick, Vesselina <vmusick@ftc.gov>
Sent: Monday, November 22, 2021 1:31 PM
To: [REDACTED]

