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From: [REDACTED]
Sent: Wednesday, April 12, 2006 9:43 AM
To: Verne, B. Michael
Subject: Fw: Question

801-1(b)

Mike,

I need clarification/confirmation on a UPE determination. I am fairly certain that I know the answer, but am skittish because of a determination that I got wrong in the context of a recent filing. You and I corresponded about the previous determination (see below) and I thought that I understood that a person was not a UPE even if he was entitled to at least 50% of the vote if he reached 50% by virtue of a combination of ownership and irrevocable proxies rather than by either independently. I understood from our correspondence that such a person was not the UPE, but learned from Nancy Ovuka that I was wrong. My misunderstanding in that scenario leads me to ask for confirmation now:

Person A holds an irrevocable proxy to vote at least 50% of the voting securities of Corp. Company B owns at least 50% of the voting securities of Corp, but its shares are voted by Person A pursuant to the irrevocable proxy. I think that both Person A and Company B are UPEs of Corp since Person A essentially has the contractual right to appoint the board and Company B holds 50% or more of Corp's voting securities even though it has given away its right to vote those shares. Is this correct?

Thanks,

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This is the correct analysis. I'm sorry if my advice mislead you in the previous analysis. Having an irrevocable proxy to vote 50% or more of the voting securities of an issuer does confer control, but the person granted the proxy does not hold the voting securities. Maybe that's where we miscommunicated.

B. Michael
4/12/06