

Verne, B. Michael

801.1(b)

From: [REDACTED]  
Sent: Friday, June 08, 2007 1:16 PM  
To: Verne, B. Michael  
Cc: [REDACTED]  
Subject: 801.1(c)

Mike,

We are trying to determine the UPE of an acquired entity. A husband and wife hold voting securities of the target in their own name. They are also the settlors of seven trusts for the benefit of their children and grandchildren, which also hold voting securities of the target. If the trust shares and the settlors own shares are aggregated, the UPE will be the settlors. If they are not, the target is its own UPE.

The trusts are irrevocable with no reversionary interests. However, the settlors have the power to replace the trust property with other property of equivalent value. Meaning, they can remove the voting securities from the trust and replace them with other property of similar value. I believe that this makes the "irrevocable" trust more like the investment funds of 801.1(c)(6), thus, the securities are under the control of the settlors, giving them control of the target and making them the UPE of the target.

Can you confirm that this is correct? We have searched the new Premerger Manual and the informal opinions and found nothing on point with regards to the power to replace the corpus of the trust. Thanks and have a great weekend.

[REDACTED]

AGREE  
Bm  
6/8/07