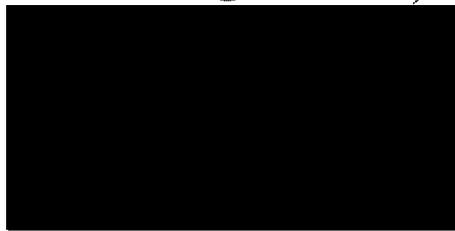


801.1(b)



March 1, 2011

VIA ELECTRONIC MAIL

B. Michael Verne, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, D.C. 20580

Re: Confirmation of Advice Regarding Determining Whether Trusts Are "Controlled"

Dear Mr. Verne:

Thank you for taking the time to speak with us last week about whether certain trusts are considered "controlled" entities under 16 CFR § 801.1(b)(2) and consequently whether they must be aggregated for purposes of determining the reportability of a proposed acquisition of voting securities. I am writing to confirm our discussion.

The Proposed Transaction

Certain trusts hold voting securities of Company A. Company A proposes a transaction in which some of its shares held by the trusts will be exchanged for shares of Company A's subsidiary, Company B. When the transaction is complete, Company B will be its own UPE.

The Trusts and Trustees

Each trust is irrevocable, and the settlor has no reversionary interest. Consequently, the issue is whether there is any person that has the present contractual right to remove and replace 50% or more of the trustees.

Each trust has a corporate trustee and two individual trustees. (Some other trusts have three or more individual trustees, but they do not present any "control" questions.) The individual trustees acting together can remove and replace the corporate trustee, but as long as there are two individual trustees, neither of them acting alone has the ability to remove the corporate trustee. No other person has the right to remove the corporate trustee.

One of the individual trustees ("Trustee 1") is a person named in the trust documents. The other individual trustee ("Trustee 2") is a partner of Law Firm. Trustee 2 remains a trustee until he resigns, or (under some of the trusts) achieves a certain maximum age, or ceases to be a partner of Law Firm.



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The Corporate Trustee

Our first concern was whether, for purposes of this transaction, the trust should be deemed to have two trustees, rather than three. The reason for our concern is that the trust agreements place certain restrictions on the corporate trustee's role with respect to the shares of Company A and Company B.

The corporate trustee is not permitted to vote shares of Company A or participate in any decision regarding the voting or disposition of the shares. For at least some amount of time following completion of the transaction, these same restrictions will apply to the shares that each trust will hold in Company B. In other words, the corporate trustee is effectively excluded from making any decisions with respect to the voting securities of Company B. One could argue, therefore, that with respect to the voting securities of Company B, the corporate trustee should not be counted, and so with respect to those shares, the trust would be deemed to have only two trustees (and thus a person with the present contractual right to remove and replace one of those trustees would be deemed to control the trust, but only as to any voting securities to which the restrictions apply). You confirmed that the trust would still be considered to have three trustees, and thus a person with the present contractual right to remove and replace one (but only one) individual trustee would not be considered to "control" the trust.

This response disposed of the question, but for additional certainty we presented the other issues that had occurred to us.

Role of Law Firm

As noted above, Trustee 2 is a partner in Law Firm. Law Firm does not have the right to remove Trustee 2, but it does have the right to terminate his membership in the firm (with no requirement for cause and no right to any form of process). One effect of terminating his membership in the firm would be to remove him as trustee.

Each trust provides that any two partners of Law Firm may appoint Trustee 2's successor. There is no contractual arrangement among its partners as to who may exercise the appointment right, although the Law Firm does prohibit any partner from accepting a trustee position without Law Firm approval. Thus, in theory, any two partners could exercise that right, and Law Firm's only remedy would be to terminate the successor Trustee 2 as a partner or sue the appointed partner for breach of the partnership agreement.

You confirmed that even if the trust was deemed to have only two trustees, Law Firm would not be deemed to control the trust. Although Law Firm arguably has the power to remove Trustee 2, Law Firm itself (as opposed to any two of its partners) does not have the present contractual right to remove and replace Trustee 2.

Role of Each Individual Trustee

The two individual trustees have the collective right (but not the obligation) to appoint additional individual trustees, but they have not appointed any. The individual trustees have the right to remove an individual trustee upon first determining that the trustee is incapacitated or incompetent to perform his duties. (In making this determination, the individual trustees are not required to obtain a court order or the opinion of a doctor or psychiatrist, but a baseless determination of incompetence or incapacity would expose the individual trustees to claims for breach of fiduciary duty.) With only two individual trustees, theoretically either trustee could determine that the other trustee is incapacitated or incompetent (and thus remove that other trustee). The sole remaining trustee would then have the right to appoint one or more additional trustees, although technically the new trustee would serve not as a successor to the removed trustee but in a newly created trusteeship. You confirmed that this does not constitute a present contractual right to remove and replace because the first individual trustee must have cause before he can remove the second individual trustee.

Role of Individual Trustee 1

The individual trustees have the power to remove Trustee 2 and to terminate Law Firm's right to appoint a successor for Trustee 2. (If the individual trustees wish, they may appoint another trustee, but are not required to do so.)

The trust agreement does not say whether Trustee 2 (who is an individual trustee but whose removal is at issue) is permitted to vote on his own removal and on termination of Law Firm's successor-appointment rights, but Trustee 2 and/or Law Firm could take the position that Trustee 2 has the right to participate in this decision. If Trustee 1 or one or more beneficiaries took a different position, a court would have to resolve the matter. You confirmed that because interpretation of the trust documents was uncertain, Trustee 1 would not be deemed to have a present contractual right to remove and replace Trustee 2.

Summary

Notwithstanding the restrictions on corporate trustee's right to participate in decisions to vote or dispose of the voting securities of Company A or Company B, each trust is considered to have three trustees. Thus, even if a person has the present contractual right to remove and replace one of the two individual trustees (but not the corporate trustee), that person would not be deemed to control the trust. Consequently, each trust is deemed to hold its trust corpus, each trust is its own ultimate parent entity, and the trusts do not need to be aggregated as a single person for purposes of determining reportability of the acquisition of Company B voting securities.

If the foregoing conclusion were not correct, and the trust were deemed to have only two trustees, it would remain true that no person has the present contractual right to appoint 50% or more of the trustees:

[REDACTED]

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- Law Firm's right to terminate a partner (and thus terminate his eligibility as trustee) and the right of any two partners in Law Firm to appoint a successor would not give any single person the present contractual right to remove and replace Trustee 2.
- Each individual trustee's right to remove the other individual trustee is not a "present" contractual right to remove and replace because the removing trustee would first need to make a determination of incapacity, incompetence, or other basis provided by the trust agreement before he could remove the other trustee.
- Trustee 1 does not have a clear right to remove Trustee 2 and terminate Law Firm's right to appoint a successor and thus would not have a present contractual right to remove and replace Trustee 2.

Thank you again for helping us sort through these issues. If I have not correctly stated your views or if you have further thoughts after reviewing this summary, I would appreciate a telephone call.

Very truly yours, [REDACTED]

[REDACTED]

[REDACTED]

AGREE
BM
3/2/11