

801.1 (b)

Verne, B. Michael

From: [REDACTED]
Sent: Monday, June 18, 2012 3:35 PM
To: Verne, B. Michael; Walsh, Kathryn
Cc: HSRHELP
Subject: HSR Inquiry: UPE

Dear Mr. Verne and Ms. Walsh:

I am writing to ask for your direction on the identification of the UPE to file on behalf of the seller of voting securities on the HSR notification and report.

Approximately 47% of the voting securities are held in an irrevocable trust (the "*Irrevocable Trust*"). The Irrevocable Trust names the settlor's sister as the sole trustee, but also names a "*Trust Protector*", who has the power to replace the trustee. Then, the settlor, during his life, retains the power to replace/appoint the Trust Protector. The settlor of the Irrevocable Trust does not retain any other residual interest or power in the trust corpus.

The settlor of the Irrevocable Trust also holds approximately 3% ownership interest in the company under his revocable trust. Thus, in combination with the 47% Irrevocable Trust, the settlor – if his power to appoint a successor Trust Protector (who cannot be himself) is deemed controlling – could be the UPE for HSR filing purposes.

Alternatively, the Trust Protector also holds a separate approximate 5% ownership interest in the company in his revocable trust. Thus, in combination with the 47% Irrevocable Trust, the Trust Protector could be the UPE for HSR filing purposes.

While I have reviewed Sec. 801.1(b) and 801.1(c)(3) and (4), I remain unsure as to which person is the proper filer (again on behalf of the seller). I would appreciate your guidance as to which person – the settlor, or the Trust Protector – should be the UPE for this filing.

Thank you in advance for your review and response.

Regards,

[REDACTED]

[REDACTED]

[REDACTED]

PROTECTOR IS UPE.

BM

K. WALSH (CONCUR)

6/18/12

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I've run into trust protectors before, but not where the settlor can remove and replace the protector and the protector can remove and replace the trustee. I think reading the language of the control rule literally you have to come to the conclusion that the protector controls the trust because it is the only person that can remove and replace the **trustee**, although arguably the settlor indirectly has that right.