

801.1

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, November 15, 2012 11:26 AM
To: Walsh, Kathryn; Verne, B. Michael
Subject: Request for Informal Advice: Foreign Entity

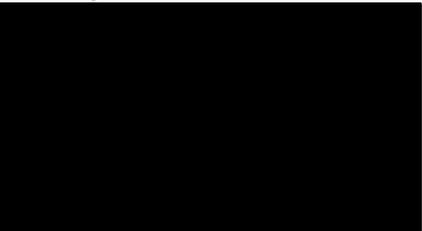
Kate and Mike,

We are working with a German client that recently went through a corporate restructuring and we are confirming our analysis of which entity is presently the ultimate parent entity. Our client's new form is a German KGaA which is a "partnership limited by shares" that has certain aspects similar to a US limited partnership, but also similar to rights of a corporation. Under German law, this entity is considered a corporation. The general partner controls 100 percent of the voting rights at the annual general meeting of the KGaA, which it exercises for those purposes. The general partner also holds 100 percent of the voting rights of another entity (SE) that entitle it to vote for directors on the SE Executive Board. The SE Executive Board in turn manages the operations of the KGaA.

Because the general partner has rights to vote for directors of SE's Executive Board, which in turn manages the operations of the KGaA, this appears more akin to a corporation rather than a partnership. In that case the control test would be governed by the right to vote 50% or more of the voting shares, rather than applying the partnership test for control. We did a search of informal interpretations and did not find anything specific on a KGaA, and thus wanted to check whether the FTC PNO has already taken a view on this type of entity in a previous matter, and if so, what is that view as regards a corporate form or a partnership form? And if not, are the voting rights that allow the general partner to vote for directors of SE, which in turn provides management of KGaA sufficient to render these voting securities under 801.1(f)(1) such that it is the UPE of both the SE and KGaA?

Thanks so much in advance for your advice on this. Of course, please let me know if it would be helpful to discuss, which I am happy to do

Best regards,



KGaA IS NON-CORPORATE
SE IS A CORPORATION

GP CONTROLS SE, NOT KGaA

BM
11/15/12

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