

801.1 (b)

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Monday, November 19, 2012 8:04 PM  
**To:** Verne, B. Michael  
**Subject:** HSR Question regarding Trusts

Mike:

We have a quick trust control question where we are trying to confirm as soon as possible that an HSR filing is not needed.

A husband and his wife set up an irrevocable trust for their child ("Trust A"). The child is an adult, and is the beneficiary and trustee of Trust A. As trustee, please assume for purposes of this hypothetical that the child has the power under the trust document to appoint and remove 50% or more of the trustees.

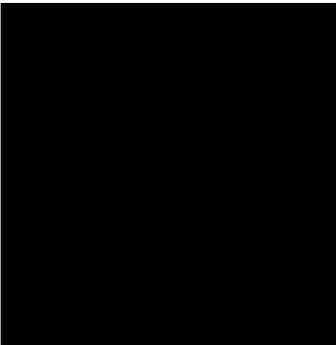
The child has provided the child's father with a broad and sweeping statutory durable power of attorney. The power of attorney is revocable. Please assume that the power of attorney provides the father with the power to exercise his child's rights in the trust, including the appointment and removal of 50% or more of the trustees.

Please confirm my understanding that where a person may appoint and remove 50% or more of the trustees of an irrevocable trust based solely on a revocable power of attorney, the power of attorney would not shift control over the trust away from the person who grants and can revoke the power of attorney. In other words, since the power of attorney is revocable, our view is that the child retains control over Trust A, even if the father could temporarily appoint and revoke 50% or more of the trustees while the proxy is in place.

This conclusion is correct in our view by analogy to other well established HSR treatment of revocable positions that get disregarded for HSR control purposes. For instance, revocable proxies for voting securities do not count toward the person receiving the proxy as having control over an issuer. Similarly, when a trust is revocable, the corpus of the trust is deemed to be the holdings of the settlor of the trust.

Thank you for your assistance.

Best regards,



Agree -  
BM  
11/20/12

K. WALSH CONCONS

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