

**Walsh, Kathryn E.**

---

**From:** Verne, B. Michael  
**Sent:** Tuesday, June 24, 2014 8:51 AM  
**To:** [REDACTED]  
**Cc:** Walsh, Kathryn E.  
**Subject:** RE: Voting Trust - UPE Question

[REDACTED] We don't think it would be the voting trustee because he is just voting the shares in his fiduciary role of trustee, but since the voting trust is irrevocable, we would say that constitutes an irrevocable proxy and the voting trust itself would be the UPE of the corporation.

---

**From:** [REDACTED]  
**Sent:** Tuesday, June 24, 2014 2:08 AM  
**To:** Verne, B. Michael  
**Subject:** Voting Trust - UPE Question

Good evening Mike.

I have a question regarding the identity of the UPE of a corporation under the following facts:

A corporation has 6 shareholders. One shareholder has 10% and the other 5 shareholders each have 18% of the voting securities of the corporation. The 5 shareholders owning the 18% each (90% total) have entered into a voting trust agreement whereby each shareholder has transferred legal and record title of his or her shares to an individual who has agreed to act as the voting trustee under the voting trust agreement. The shares governed by the voting trust agreement are held in the name of the voting trustee and each shareholder has received a voting trust certificate in proportion to the shares held prior to the transfer to the voting trustee.

The voting trustee has all rights of every nature with respect to the shares, including the right to vote the shares, provided that the voting trustee is required to direct the corporation to pay all cash dividends directly and proportionately to the record holders of the voting trust certificates. The voting trust agreement has a term of 15 years and is irrevocable, except that the voting trustee can terminate it, in his sole and absolute discretion, if he determines that it is in the best interests of all participating shareholders to do so. The voting trustee also has the right to appoint a co-trustee or a successor trustee.

It is my understanding that, since there is no one shareholder that owns 50% or more of the voting securities, but for the voting trust agreement, the corporation would be its own UPE. However, given the terms of the voting trust agreement (15 year term, irrevocable) and the power granted to the voting trustee (right to vote the shares and right to appoint a successor trustee), it is my belief that the voting trustee controls 90% of the voting securities and, therefore, is the UPE of the corporation. Would you concur?

Thanks,

[REDACTED]

**CONFIDENTIALITY NOTICE:** The information contained in this e-mail communication and any attached documentation may be privileged, confidential or otherwise protected from disclosure and is intended only for