

801.11(e)  
801.1

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, July 01, 2014 5:15 PM  
**To:** Verne, B. Michael  
**Subject:** Two (easy) questions

Hi Mike.

I hope you are staying cool.

I have two questions for you.

- (1) Assume X is its own UPE and does not have regularly prepared financial statements and does not control any entity that does. X will be acquiring additional voting shares of Y. When X creates its pro forma balance sheet under Section 801.11(e) to determine if it meets the size-of-person test, I understand that it does not have to include on this pro forma balance sheet any voting shares **and non-voting** shares it may already hold in Y. Is that correct? ✓
  
- (2) Mr. X is the settlor of trust (T). T is irrevocable and its beneficiaries are Mrs. X and the X children. Mr. X does not have the unilateral power to remove and replace 50% of the trustees of T. T's only holdings are minority shares in Y. Mr. X has the right to give the trustees of T written notice to dispose of such shares so long as such shares are not transferred to Mr. X, Mr. X's estate, Mr. X's creditors, or the creditors of Mr. X's estate. Mr. X may or may not ever exercise this right. Moreover, even if Mr. X exercised this right, Mr. X could not direct the trustees to transfer the shares to Mr. X. I assume this right would **not** be considered a reversionary interest in T's corpus such that Mr. X would be T's UPE. Do you agree? ✓

Thanks for your help Mike.

Best regards,  
[REDACTED]

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[REDACTED]

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1. Correct - 801.11(e) says "securities" not "voting securities". We have interpreted this to mean voting and non-voting securities, as well as non-corporate interests.

2. Agree

Bmw ✓  
7/2/14

KW CONCENS