

801.1 (b)  
801.1 (c)

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Wednesday, July 02, 2014 12:24 PM  
**To:** Verne, B. Michael  
**Subject:** Question Regarding 401(k) Plans

Mike,

Hope all is well. In the attached interpretation: <http://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/0710012>,

The view of PNO seems to be that stock held pursuant to a 401(k) plan is held by the employer trust that administers the plan, and not be the employee, even if the employee has the ability to direct the vote of the securities allocated to his/her account.

I just want to confirm this is still the current view.

Thanks,

[REDACTED]

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[REDACTED]

I think this is still right, except in the case of certain "closely held" 401(k) plans (generally for the benefit of one or a very few individuals, e.g., family). We have seen instances of these, where the individual has the right to remove and replace the trustee(s) of the 401(k) and therefore would be deemed to control it and hold the securities in the plan. Even if this were not the case, I think an individual could control a corporation whose stock was held by the 401(k) if he could unilaterally direct the voting of 50% of the stock of that corporation. Neither of these is generally the case in a typical 401(k) plan, but I vaguely remember the issue coming up in the context of a violation sometime in the past.

BW  
7/2/19

KW  
CONVULS