

Sheinberg, Samuel I.

From: Shaffer, Kristin
Sent: Tuesday, July 10, 2018 3:19 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Control question / non-stock corporation

Mary,

We agree.

Best regards,
Kristin

Kristin Shaffer

Attorney
Premerger Notification Office
Federal Trade Commission
202-326-3434 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Tuesday, July 10, 2018 1:36 PM
To: [REDACTED]
Subject: Control question / non-stock corporation

Hi All,

I know that when shareholders are authorized (per the shareholders' agreement) to jointly nominate and appoint 50% or more of the board of directors this does not confer control of the issuer because the power to nominate and appoint is jointly held, not held by just one shareholder.

Does the analysis change if the only two members and directors of a foundation organized as a non-stock corporation are husband and wife and the charter says they have to agree on replacement directors? I understand that if either of them could individually designate one or both replacement directors this would confer control on that person. I believe that if they have to agree this means neither of them would control the foundation individually or together because the control rules just look at one spouse at a time. Please let me know if you agree.

[REDACTED]

[REDACTED]

[REDACTED]

