

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Monday, April 15, 2019 5:24 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Biagioli, Kimberley; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora
Subject: FW: Control of a corporate issuer under 801.1(b)

From: Carson, Timothy
Sent: Monday, April 15, 2019 5:24:03 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Control of a corporate issuer under 801.1(b)

[Agree](#)

From: [REDACTED]
Sent: Monday, April 15, 2019 12:05:11 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Control of a corporate issuer under 801.1(b)

Dear PNO,

We plan to make an HSR filing for Company C, a corporation, triggered by its proposed acquisition of target, and would like to confirm the UPE assessment for Company C. Company C has two classes of voting shares, Class A and Class B, each with the right to elect 2 of Company C's 4 directors. Shareholder Y holds a slight majority of Class A shares but less than 50% of the voting shares of Company C, as determined by HSR rule 801.12(b). Similarly, Shareholder X holds a slight majority of Class B shares but less than 50% of the voting shares of Company C, again as determined by HSR rule 801.12(b). Neither Shareholder Y nor Shareholder X, nor any other shareholder, has the contractual right to designate 50% or more of the 4 board seats. Because Company C elects board seats through noncumulative voting, it is the case that, by voting her majority interest in Class A shares, Shareholder Y can effectively elect 2 of 4 board seats, and the same is true of Shareholder X with respect to his Class B interest. However, neither Shareholder Y nor Shareholder X controls Company C under 801.1(b)(1) (holding 50% or more of Company C's outstanding voting shares) or 801.1(b)(2) (having the contractual power to designate 50% or more of the board). Therefore, neither Shareholder Y nor Shareholder X controls Company C. Please let me know if you agree.

Many thanks,

[REDACTED]

[REDACTED]

