

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Wednesday, June 05, 2019 2:59 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Olson, Eric
Subject: FW: Control of a family foundation/nonstock corp 801.1(b)(2)

From: Carson, Timothy
Sent: Wednesday, June 5, 2019 2:58:43 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Control of a family foundation/nonstock corp 801.1(b)(2)

The appointment rights of A, A's wife, A's adult sister, and A's adult son are not aggregated when determining who, if anyone, controls the nonstock corporation.

From: [REDACTED]
Sent: Tuesday, June 4, 2019 12:55:52 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: Control of a family foundation/nonstock corp 801.1(b)(2)

Dear all,

We are considering control of a family foundation which holds voting shares of a public company (to determine whether to aggregate voting shares held by the foundation with the holdings of certain family members). The foundation is a nonstock corporation, and a majority of directors must agree to determine directors. There are currently four directors: A, A's wife, A's adult sister, and A's adult son.

Control of a nonstock corporation is based on having the contractual power presently to designate 50 percent or more of the directors (16 CFR 801.1(b)(2)).

The ABA PNPM (5th) #5, editor's note says: "The PNO has advised that the rights of spouses and their minor children are not aggregated in connection with determining who controls a trust or who has the contractual right to appoint at least 50 percent of the directors of a corporation." Not aggregating contractual rights seems sensible because individuals are in theory able to act freely and individually. Our view, which we believe is consistent with PNPM #5, is that A and A's wife (2/4 directors) would not be aggregated for purposes of determining control of the foundation based on contractual power.

Do you agree that the family foundation is its own UPE?

[REDACTED]

[REDACTED]

