

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Monday, June 17, 2019 1:16 PM
To: Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Olson, Eric
Subject: FW: HSR Q re Voting Trust

From: Walsh, Kathryn E.
Sent: Monday, June 17, 2019 1:16:18 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: HSR Q re Voting Trust

[We think the Trust is the UPE.](#)

From: [REDACTED]
Sent: Friday, June 14, 2019 9:26:04 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: HSR Q re Voting Trust

Good morning,

I would appreciate some informal guidance regarding the following hypothetical.

Company X signs two separate agreements to acquire 100% of the voting securities of Entity A and Entity B, two independent C-Corps that operate in the same industry. 99 percent of the voting securities of both Entity A and Entity B are held by a voting trust established in the 1920s (the Trust). The Trust issues certificates of deposit to Certificate Holders evidencing their interest in the shares of Entity A and Entity B. The Certificate Holders are entitled to each holder's proportionate share of dividends and to vote on certain changes to the terms of the Voting trust. There is no living settlor with a reversionary interest in the Trust, but the Trust is term-limited and must be renewed every 10 years by vote of the Certificate Holders, which has happened every ten years since its founding. The next date of expiration is in 2024.

As holder of 99 percent of the voting securities in Entity A and Entity B, the Trust has the power to appoint directors of Entity A and Entity B by vote of a majority of the co-trustees.

Question: Given the term-limited nature of the Trust, is the Trust considered "revocable" such that Entity A and Entity B are each its own UPE under the HSR Rules? Or is the Trust considered irrevocable such that the Trust is the UPE of both Entity A and Entity B? The acquisitions of Entity A and Entity B are each independently subject to the requirements of the Act, as each is valued above the "size of transaction" threshold. But it would be somewhat easier to file them under a single Acquired Person than as separate acquisitions -- hence our question.

Thanks for your assistance!

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]