

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Tuesday, November 19, 2019 11:49 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Musick, Vesselina
Subject: FW: Trust UPE Question

From: Whitehead, Nora
Sent: Tuesday, November 19, 2019 11:49:05 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Trust UPE Question

The Trust Adviser is the UPE.

From: [REDACTED]
Sent: Tuesday, November 19, 2019 9:37:58 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: Trust UPE Question

Dear All,

I have a question about determining the UPE of a trust for purposes of a proposed asset transaction. The trust in question is irrevocable and the settlors—a married couple—do not have a reversionary interest in the corpus of the trust. The trust agreement grants a “Trust Advisor” the authority to “remove any and all Trustees and [to] designate and appoint successor Trustees” so long as such removal and appointment is made by an instrument in writing, the successor Trustee accepts the appointment, and the Trust Advisor does not appoint himself or herself, the Settlers, or any other “interested person” as defined in the trust agreement. However, the trust agreement also provides that the “Settlors either jointly or individually, shall retain the right to appoint a new Trust Advisor at any time during their lifetime.” So, even though the Trust Advisor can remove and replace the trustee at any time, he or she is also subject to removal and replacement by the Settlers at any time.

I understand that “any person other than the settlor [who] has the contractual power to remove and replace the trustee (or 50 percent or more when there are multiple trustees) at any time and for any reason . . . controls the trust and holds the assets in the corpus of the trust.” See *Premerger Notification Practice Manual Interp. No. 12*. Does the Settlers’ ability to remove and replace the Trust Advisor change the analysis here such that the Settlers, rather than the Trust Adviser, would be deemed to control the trust?

Thank you,

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