

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Wednesday, May 6, 2020 9:23 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Question Re: UPE Analysis

From: Carson, Timothy
Sent: Wednesday, May 6, 2020 9:22:32 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Question Re: UPE Analysis

It appears that Trust has the final say since it has the right to approve and/or veto any director elected by a majority of Corporation A's Board of Directors, so we cannot agree that Trust does not control.

From: [REDACTED]
Sent: Monday, May 4, 2020 11:16:56 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: Question Re: UPE Analysis

Dear PNO:

Hope you are staying safe and well.

I am writing to confirm our UPE analysis with respect to a proposed transaction between Corporation A and Corporation B.

Corporation A is a non-profit public benefit corporation, which doesn't have any members or interest holders. Corporation A has 25 directors on its Board of Directors.

A Charitable Trust ("Trust") was established to found Corporation A. While the Trust (which is governed by five Trustees) does not "hold" anything in Corporation A, as Corporation A doesn't have any members or interest holders, the Trust does have a number of important rights relating to Corporation A's governance and operations, including that: (1) any action that requires approval of the Board of Directors also requires the approval of a majority of the Trustees of the Trust; (2) five of the directors on Corporation A's Board of the Directors will be Trustees of the Trust at all times; and (3) the Trust owns the land which Corporation A uses for its operation, and which is currently leased to Corporation A (note that the land will be transferred to Corporation A at the closing of the proposed transaction).

Other than the five Trustees of the Trust, which are required to sit on the Board of Directors of Corporation A, the remaining directors of Corporation A are elected by a majority of the Board of Directors.

Although the Trustees of the Trust have the right to approve and/or veto any director elected by a majority of Corporation A's Board of Directors, this does not confer "control" within the meaning of Section 801.1(b)(2) because the Trust does not have the contractual power to appoint 50% or more of the Board of Directors. See [Informal Interpretation No. 9603008 \(March 20, 1996\)](#). Accordingly, we believe that Corporation A is its own UPE.

If you could please confirm you agree with our analysis, that would be much appreciated.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]