

## Sheinberg, Samuel I.

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**From:** [REDACTED]  
**Sent:** Tuesday, June 9, 2020 10:53 AM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Musick, Vesselina  
**Subject:** FW: 801.12 and voting agreement

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**From:** Whitehead, Nora  
**Sent:** Tuesday, June 9, 2020 10:53:28 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: 801.12 and voting agreement

Confirmed.

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**From:** [REDACTED]  
**Sent:** Monday, June 8, 2020 12:02:06 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Subject:** 801.12 and voting agreement

Good morning,

Hope all there are safe and healthy.

It is our understanding that "voting agreements don't factor into the 801.12 calculations." Rather, the charter is what governs. The quote is taken from Informal Interpretation 1405008 (<https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1405008>), but is only made by the submitter. The PNO does not dispute that assertion in its response, but does not explicitly support it either.

An older informal interpretation 1111004 (<https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1111004>) appears to support that position. The submitter asks "...you use the voting rights for directors which are set forth in the articles of incorporation or in the stock instruments, and NOT the voting rights that might arise under a shareholders agreement? Is that correct?" It appears the answer is "correct."

Could you please confirm that remains the PNO's position?

Best,

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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