

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Thursday, March 23, 2023 3:00 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle  
**Subject:** FW: Question Re: 802.10(b)

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**From:** Whitehead, Nora <nwhitehead@ftc.gov>  
**Sent:** Thursday, March 23, 2023 2:59:55 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Question Re: 802.10(b)

It's the basic percentage of both entities.

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**From:** HSRHelp <[HSRHelp@ftc.gov](mailto:HSRHelp@ftc.gov)>  
**Sent:** Wednesday, March 22, 2023 4:27 PM  
**To:** Walsh, Kathryn E. <[kwash@ftc.gov](mailto:kwash@ftc.gov)>; Berg, Karen E. <[KBERG@ftc.gov](mailto:KBERG@ftc.gov)>; Musick, Vesselina <[vmusick@ftc.gov](mailto:vmusick@ftc.gov)>; Shaffer, Kristin <[kshaffer@ftc.gov](mailto:kshaffer@ftc.gov)>; Sheinberg, Samuel I. <[SSHEINBERG@ftc.gov](mailto:SSHEINBERG@ftc.gov)>; Six, Anne <[asix@ftc.gov](mailto:asix@ftc.gov)>; Whitehead, Nora <[nwhitehead@ftc.gov](mailto:nwhitehead@ftc.gov)>; Fetterman, Michelle <[mfetterman@ftc.gov](mailto:mfetterman@ftc.gov)>  
**Subject:** FW: Question Re: 802.10(b)

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**From:** [REDACTED]  
**Sent:** Wednesday, March 22, 2023 4:19:04 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <[HSRHelp@ftc.gov](mailto:HSRHelp@ftc.gov)>  
**Cc:** [REDACTED]  
**Subject:** Question Re: 802.10(b)

All,

We have a question regarding the application of Rule 802.10(b)(2)(i) in connection with the conversion of a limited partnership to a corporation and would appreciate your thoughts.

More specifically, we wanted to understand how "per centum holdings" should be determined under Rule 802.10(b)(2)(i) when the exemption provides that "the acquiring person does not increase its *per centum holdings* in the new entity relative to its *per centum holdings* in the original entity":

Is "per centum holdings" the basic percentage ownership of both entities or is the "per centum holdings" determined similar to the analysis for "control" (*i.e.*, (1) for the partnership, based on the percentage right to profits or right to assets on dissolution, excluding any percentage interests that have preferred returns and (2) for the corporation, under Rule 801.12 where the corporation has multiple classes of stock that vote for certain directors)?

In our case, we have a partnership where many limited partners have a class of units entitling them to preferred returns, and based on #4 from the Premerger Notification Practice Manual (5th Ed.), we understand that the Premerger Notification Office views these interests as "debt" and therefore they are not factored into the determination of control of a non-corporate entity. The corporation after conversion will have 2 classes of common stock, and holders of Class B stock will elect 6 out of 11 directors, and holders of Class A and Class B voting together will elect the remaining 5 directors. We have reviewed various informal interpretations involving per centum holdings, but we did not find any interpretations regarding how per centum holdings should be calculated when converting from one entity type to another.

Because there are limited partners who currently hold only preferred units in the partnership that will receive common stock in the corporation, if the per centum holdings are determined in the same manner as the traditional "control" analysis as set forth above, the holdings of these limited partners will increase merely as a result of the different

methods used for determining control of corporate and non-corporate entities when in fact the true percentage ownership of these limited partners will actually decrease in connection with the conversion.

Thank you and please let us know if there is any additional information you need.

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[REDACTED]