

Sheinberg, Sam

From: HSRHelp
Sent: [REDACTED]
To: Walsh, Kathryn
Subject: Fetterman, Michelle
FW: Question about 16 CFR 801.1(b)(1)(i)

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Monday, March 20, 2023 1:00:03 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: R.F. Question about 16 CFR 801.1(b)(1)(i)

Confirmed

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Sunday, March 19, 2023 7:00:03 PM (UTC-05:00) Eastern Time (US & Canada)
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBerg@ftc.gov>; Musick, Vanessa <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel <SHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>
Subject: FW: Question about 16 CFR 801.1(b)(1)(i)

From: [REDACTED]
Sent: Sunday, March 19, 2023 7:00:03 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Question about 16 CFR 801.1(b)(1)(i)

Good morning

I hope you are all well.

I'm very sorry to trouble you with a question about control of an LLC for UPE purposes.

We have an LLC with an investor agreement that allows one of its investors to appoint one member to the board. That investor **does not** have the right to 50% of the dividends or 50% of the assets on dissolution. If that is the correct

801.1(b)(1)(i) because the entity is an LLC and not a corporation. However, we are concerned because there is still de facto

control, although not as defined by the rules. If the LLC were controlled by the investor, the investor would be

the UPE and the UPE would control the line of business.

Our client is concerned about the appearance of control from over substance. Can you please confirm that the current enforcement policy is to apply 16 CFR 801.1(b)(1)(i) if a majority of LLC directors is irrelevant to the control analysis? Thank you.

[REDACTED] wishes