

Sheinberg, Samuel I.

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)

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

It's the basic percentage of both entities.

From: HSRHelp <HSRHelp@itc.gov>
Sent: Wednesday, March 22, 2023 4:27 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin <kshaffer@itc.gov>; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle; Nora <nwhitehead@itc.gov>
Subject: FW: Question Re: 802.10(b)

From: [REDACTED]
Sent: Wednesday, March 22, 2023 4:19:04 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@itc.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 the context of a partnership to a corporation and would appreciate your guidance. More specifically, we want 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 similarly to the partnership, based on the percentage rights to profits or right to assets on dissolution, excluding any percentage for the corporation, under Rule 801.12 where the corporation has no 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 Preliminary Notification Decision Manual (the Manual), we understand that the 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 the conversion will elect 6 out of 11 directors, and holders of Class A and Class B units will elect the remaining 5 directors. We have reviewed various informal interpretations involving per centum holdings, but we did not find any interpretations regarding this question.

Because there are limited partners who own preferred units in the partnership that will receive common stock in the corporation, if the analysis as set forth above, the holdings of these limited partners will increase merely as a result of the conversion.

methods used for
ownership of these limited partners will actually decrease in connection with the
Thank you and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]