

Shin, Amber, Samuel I.

From: HSRHelp
Sent: Thursday, August 10, 2023 9:07 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle
Subject: FW: Question about [REDACTED]

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Thursday, August 10, 2023 9:07:09 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>; [REDACTED] >
Subject: RE: Question about Trust Protector

Based on what you describe, as long as the grantor serves as trust administrator with the right to remove/replace 50% or more of the trustees, the grantor is the UPE of the trust. If the trust protector does not have a separate economic interest in the assets of the trust (e.g., where the trust protector is a third party administrator and not the grantor), then the trust is its own UPE.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: August 8, 2023 9:51 AM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBerg@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEIN@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>; Nora <nwhitehead@ftc.gov>
Subject: Question about Trust Protector

From: [REDACTED]
Sent: Tuesday, August 8, 2023 9:57 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Question about Trust Protector

Dear Premerger Notification Office,
We are writing to confirm the position of the trust's UPE under the FTC Act (15 U.S.C. § 7801) and informal interpretation of the trust's corpus is its own ultimate parent entity of the trust, not the trustees.
The trust in question is an irrevocable family trust with two trustees. There is also a Trust Protector who has the right to remove any trustee for any reason or no reason. The Trust Protector also has the power to appoint an individual, corporation, or other entity to replace the removed trustee or otherwise whenever the office of trustee becomes vacant. The trust instrument does not confer this right to any other individuals or entities.
The Trust Protector does not have any economic interest in the trust (e.g., the Trust Protector does not have a role) the rights to the corpus or the trust or rights to receive distributions from the trust.
The trust instrument further provides that the Grantor (unless the Grantor becomes a minor, in which case the Trust Protector until death, incapacity, or resignation, at which time the role will pass on to other individuals in the order then specified in the trust instrument).
Based on the facts as described, could you kindly confirm that the Trust Protector does not have the right to remove and appoint trustees of the trust and that therefore the trust is its own UPE?
Best regards,
[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]