

**Sheinberg, Samuel I.**

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**From:** HSRHelp  
**Sent:** Monday, January 22, 2024 1:50 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter  
**Subject:** FW: Trust Analysis - Shared Replacement/Removal Power

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Monday, January 22, 2024 1:50:21 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Trust Analysis - Shared Replacement/Removal Power

[REDACTED]

[REDACTED]

Based upon the facts you have provided, A and B each have the power to remove and replace the trustees. Since they do not need to consult with one another or jointly act, that power is not "shared." Therefore, each would be a UPE of the corpus of the trust.

Best regards,

Kristin

**Kristin Shaffer**

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**From:** [REDACTED]  
**Sent:** Monday, January 22, 2024 7:59:00 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** Trust Analysis - Shared Replacement/Removal Power

Dear all - hoping that 2024 is off to a great start. I'm looking to get confirmation that the language in the commentaryed-11.05 - "When the power to remove and replace 50% or more of the trustees is shared or subject to the consent of a third party, no one person has the power to appoint 50% or more of the trustees and no one person is deemed to control the trust." (emphasis added)

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In my scenario, both A and B "share" the removal/replacement power which (other than certain limitations on who can come in as a replacement) is absolute. And they may both unilaterally exercise that power without consultation or coordination with one another in its exercise - although as a practical matter each exercises an absolute veto on the *actual* ability to remove/replace trustees - since any move that is not to the liking of the other can be immediately undone (and then redone) endlessly as both hold that full removal/replacement right. The plain reading of the commentary to #1106005 would lead to the same conclusion here - that of no control existing over the trust, based on this dual removal/replacement power.

Note that even if the control link were not severed by virtue of this shared power, there remain potential other

events to break the chain of causation. For example, if the defendant had been negligent in not providing adequate instructions about potential competence issues, the defendant could legally exercise the potential competence issues. In addition, if the defendant had been negligent in not providing adequate instructions about potential competence issues, the defendant could legally exercise the potential competence issues. In addition, if the defendant had been negligent in not providing adequate instructions about potential competence issues, the defendant could legally exercise the potential competence issues.

Best

