

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Thursday, June 28, 2018 9:38 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora; Cummings, Stephanie
Subject: FW: Rule 801.1 Questions - Unincorporated Entity

From: Carson, Timothy
Sent: Thursday, June 28, 2018 9:37:35 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Rule 801.1 Questions - Unincorporated Entity

Confirmed.

From: [REDACTED]
Sent: Wednesday, June 27, 2018 12:28:56 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Rule 801.1 Questions - Unincorporated Entity

I would appreciate your confirmation of the following conclusions:

Rule 801.1(b) provides that "[t]he term control ... means: ... (ii) in the case of an unincorporated entity, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity." Under Rule 801.1(b)(2), control means "[h]aving the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation.

If a limited liability company, which is an "unincorporated entity" under the HSR rules, has single member who the right to designate 50 percent or more of the LLC's Board of Directors equivalent, that has no bearing on the "control" definition under 801.1(b).

Also, if a limited liability company elects to be treated as a C corporation for tax purposes, that does not change the applicable test for "control" under the HSR rules either.

Thank you in advance for your assistance and please feel free to contact me if you have any follow up questions.

Regards,

[REDACTED]

