

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Wednesday, January 6, 2021 11:51 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Musick, Vesselina
Subject: FW: Intraperson Question

From: Whitehead, Nora
Sent: Wednesday, January 6, 2021 11:50:40 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Intraperson Question

No, it doesn't qualify for 802.30 because A controls B (which controls C) through the contractual right to appoint directors and not via ownership of voting securities.

From: [REDACTED]
Sent: Wednesday, January 6, 2021 9:01:53 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Intraperson Question

Person A controls Company A, a corporation, by virtue of holding 50% of more of the voting securities of Company A. Person A has the contractual right to appoint 50% or more the directors of Company B, a corporation (but holds less than 50% of the voting securities of Company B). Company B owns 100% of the voting securities of Company C, a corporation. Thus, Person A is the UPE of Company A, Company B, and Company C.

Company A and Company C plan to merge.

Rule 802.30 states, "An acquisition...in which the acquiring and at least one of the acquired persons are, the same person by reason of §801.1(b)(1) of this chapter, ... is exempt from the requirements of the Act." 801.1 (b)(1) states: "(b) Control. The term control (as used in the terms control(s), controlling, controlled by and under common control with) means: (1) Either. (i) Holding 50 percent or more of the outstanding voting securities *of an issuer* or (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;" [emphasis added]

Since Company B, an entity controlled by Person A, owns 50% or more of the outstanding voting securities *of the issuer* Company C, does the merger of Company A and Company C qualify for the intraperson exemption?

Thanks,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
