

## Sheinberg, Samuel I.

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**From:** [REDACTED]  
**Sent:** Monday, June 21, 2021 2:06 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina  
**Subject:** FW: Confidential

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Monday, June 21, 2021 2:06:04 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Subject:** RE: Confidential

[REDACTED]

The acquisition of the advisor would only be exempt if the advisor only provides services to REITs within the same Person. If that is not assured, we recommend filing.

Best regards,  
Kristin

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**From:** [REDACTED]  
**Sent:** Thursday, June 17, 2021 3:18 PM  
**To:** [REDACTED]  
**Subject:** Confidential

Dear PNO Staff,

I write to confirm the applicability of the REIT exemption and PNPM Int. 105 to (1) the acquisition of a REIT advisor by a REIT and (2) the anticipated merger of that REIT with another REIT that is a separate person under the HSR Rules.

### Factual Background

REIT A and REIT B are public, non-traded REITs. Although REIT A and REIT B are separate “persons” for HSR purposes, they are both part of the same REIT family and are managed by a common group of sponsors. REIT B will acquire SponsorCo, an entity that provides advisory services to both REIT A and REIT B (the “Advisor Acquisition”). The Advisor Acquisition meets the size of transaction and size of person tests.

Following the Advisor Acquisition, as part of a separate merger transaction, REIT B plans to merge with and into Merger Sub, a wholly-owned subsidiary of REIT A, with Merger Sub surviving as a wholly-owned subsidiary of REIT A and holding all of the assets of REIT B (the “REIT Merger”).

Pursuant to an agreement to be executed by the parties, their intent is that, following the REIT Merger, SponsorCo will provide advisory services exclusively to REIT A, which will include all of the assets of REIT B. However, it is theoretically possible that, following the Advisor Acquisition, the REIT Merger would not occur. This could occur, for example, if, contrary to the parties’ current intent, the shareholders of REIT A and REIT B do not approve the REIT Merger. In such a scenario, SponsorCo, a subsidiary of REIT B, would provide advisory

services to both REIT B and REIT A, which would remain separate UPEs under common management within the same REIT family.

**Analysis**

We believe that the foregoing transactions are not reportable. The REIT Merger is exempt as the acquisition of a REIT by another REIT. *See* 16 CFR § 802.1; 61 Fed. Reg. 13,666, 13,683 (Mar. 28, 1996). The Advisor Acquisition is exempt because it is the parties' intent that, following the acquisition, SponsorCo will provide advisory services exclusively to the "person" that includes REIT B and SponsorCo. PNPM Int. 105 states that "[a] REIT's acquisition of the voting securities of a non-REIT that provides advisory services to the REIT and property management services to the REIT is also exempt if the acquired entity provides or will provide such services exclusively to the REIT to maintain, manage or supervise the operation of the REIT's real property." Here, it is the intent of the parties that, following the transactions, SponsorCo will provide advisory services exclusively to the same REITs it advises today, and that those REITs will be included in the same UPE as SponsorCo. The theoretical and unlikely possibility that the REIT Merger might not occur should not negate the exemption for the Advisor Acquisition.

**Question**

Could you please let us know whether you agree that the transactions above are non-reportable? Your thoughts, as always, would be welcome.

Best regards,

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]