

**Gillis, Diana L.**

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**Subject:** FW: REIT question

**From:** Verne, B. Michael  
**Sent:** Tuesday, December 02, 2014 1:56 PM  
**To:** [REDACTED] Walsh, Kathryn E.  
**Subject:** RE: REIT question

[REDACTED] - We can't blink on this one. The rule says "No new assets will be contributed to the new entity as a result of the conversion". We have stretched that to say that if only cash is introduced you can still use the exemption, but if any non-cash assets are contributed, the exemption is not available.

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**From:** [REDACTED]  
**Sent:** Tuesday, December 02, 2014 12:42 PM  
**To:** Verne, B. Michael; Walsh, Kathryn E.  
**Subject:** RE: REIT question

Mike,

The transaction described below is a reorganization intended to convert REIT LLC into a corporation and reincorporate it from Delaware to Maryland. Buyer is a shell company formed for the purpose of acquiring the private letter ruling relating to the REIT qualification of the assets currently held by REIT LLC through its operating partnership, as is necessary to accomplish the reorganization. Buyer's current assets (shares of stock of publicly traded REITs valued at approximately \$1 million and the private letter ruling) are valued well below the HSR filing threshold such that the direct acquisition of such assets would not be subject to the reporting requirements of the Act. With the exception of these de minimis assets (they will constitute less than 0.10% of the total enterprise assets after the merger), the assets that will be held by Buyer are the exact same assets currently held by REIT LLC. In addition, as a result of the IPO the percent interest held by the shareholders in Buyer will be less than the percent interest currently held by the shareholders in REIT LLC. Can you confirm whether the shareholder acquisitions will be exempt by 802.10?

Many thanks,

[REDACTED]

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**From:** Verne, B. Michael [<mailto:MVERNE@ftc.gov>]  
**Sent:** Monday, December 01, 2014 8:29 AM  
**To:** [REDACTED] Walsh, Kathryn E.  
**Subject:** RE: REIT question

Yes – we are saying the same thing

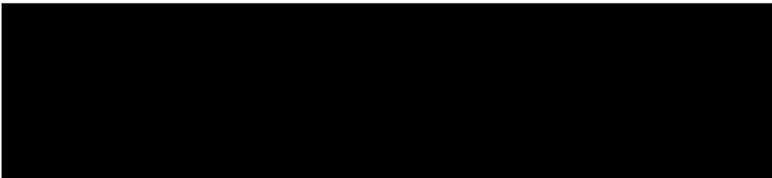
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**From:** [REDACTED]  
**Sent:** Wednesday, November 26, 2014 3:16 PM

**To:** Verne, B. Michael; Walsh, Kathryn E.  
**Subject:** RE: REIT question

I think we are saying the same thing, but just so I'm clear:

- Buyer (currently non-REIT) issues IPO and as a result qualifies as a REIT. Buyer acquires from REIT LLC a controlling interest in Target which holds > \$75.9 million in transmission and distribution assets and < \$75.9 million in non real property assets. The non-exempt assets are valued < \$75.9 million, so the acquisition is exempt by 802.4 as an acquisition by a REIT of real property valued > \$75.9 and non real property valued < \$75.9.
- REIT LLC merges into Buyer. Exempt as an acquisition by a REIT of a REIT.
- Shareholders of REIT LLC acquire voting securities of Buyer as consideration for the merger. Backside filings required by Shareholders of REIT LLC and Buyer (shareholders files as acquiring persons, and Buyer files as acquired person).



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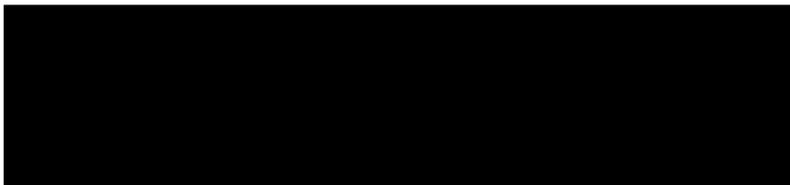
**From:** Verne, B. Michael [mailto:MVERNE@ftc.gov]  
**Sent:** Wednesday, November 26, 2014 2:51 PM  
**To:** [REDACTED] Walsh, Kathryn E.  
**Subject:** RE: REIT question

Yes - but I thought there were also backside acquisitions by non-REITs of shares of the REIT.

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**From:** [REDACTED]  
**Sent:** Wednesday, November 26, 2014 2:49 PM  
**To:** Verne, B. Michael; Walsh, Kathryn E.  
**Subject:** RE: REIT question

Mike - Since the Buyer is issuing the IPO prior to (in order to fund) the acquisition of a controlling interest in the Target, and Buyer will meet the requirements necessary to qualify as a REIT as a result of the IPO (Buyer will no longer be closely held and will have more than 100 shareholders as a result of the IPO), wouldn't the exemption applicable to the acquisition by a REIT of the voting securities (interests) of a REIT exempt the acquisition of a controlling interest in the Target and the merger (PNPM 181)? -- assuming that Buyer meets the qualifications of a REIT immediately prior to the acquisition of a controlling interest in the Target and the merger?



**From:** Verne, B. Michael [mailto:MVERNE@ftc.gov]  
**Sent:** Wednesday, November 26, 2014 2:01 PM  
**To:** [REDACTED] Walsh, Kathryn E.  
**Subject:** RE: REIT question

[REDACTED] - The REIT exemption will apply to Buyer's acquisition of a controlling interest in Target and the merger. Backside filings may be required by holders of REIT LLC that acquire voting securities of Buyer valued in excess of \$75.9 million. We agree that all real property (including the transmission and distribution assets) are exempt for the REIT, but you need to have a specific 802.2 exemption for those assets when a non-REIT is acquiring shares of a REIT (Similar to where a REIT can acquire hotels with casinos without filing, but a non-REIT would have to value the hotel/casinos as non-exempt assets when acquiring shares of a REIT). We can't really see a good fit in any of the 802.2 exemptions for those assets.

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**From:** [REDACTED]  
**Sent:** Wednesday, November 26, 2014 12:50 PM  
**To:** Verne, B. Michael; Walsh, Kathryn E.  
**Subject:** REIT question

Hi Mike and Kate,

REIT LLC holds a controlling interest in Operating Partnership LP ("Target"). Target holds electric transmission and distribution assets valued in excess of \$75.9 million, and non-real property assets valued at less than \$75.9 million. B Inc. (Buyer) currently holds shares of stock of publicly traded REITs which are valued at approximately \$1 million and an IRS Private Letter Ruling confirming that electric transmission and distribution assets constitute qualifying real estate assets under the REIT tax rules. Buyer is currently not a REIT and could not qualify as a REIT given the fact that it is currently closely held and has less than the required 100 shareholders. As part of a larger transaction, Buyer intends to issue its stock in an IPO, the proceeds of which will be used to acquire a controlling interest in Target. Simultaneous with or immediately following Buyer's acquisition of a controlling interest in Target, REIT LLC will merge with and into Buyer, with Buyer surviving. As a result, Buyer will indirectly hold electric transmission and distribution assets valued in excess of \$75.9 million, and non-real estate assets valued at less than \$75.9 million. Also, Buyer will meet the requirements necessary to qualify as a REIT since, as a result of the IPO, it will no longer be closely held and will have more than 100 shareholders. Holders of REIT LLC will receive voting securities of Buyer and cash as consideration for the merger.

Can you confirm whether the REIT exemption will apply to Buyer's acquisition of a controlling interest in Target and the merger? Also, can you confirm whether backside filings will be required by Buyer and holders of REIT LLC that acquire voting securities of Buyer valued in excess of \$75.9 million as a result of the merger?

Many thanks as always,  
[REDACTED]