

**From:** Shaffer, Kristin  
**Sent:** Thursday, April 21, 2016 9:27 AM  
**To:** [REDACTED]  
**Cc:** Walsh, Kathryn E.; [REDACTED]  
**Subject:** RE: Natural Person - clarifications on SoP analysis

[REDACTED],

In determining the size of a natural person, 801.11(d) allows for the exclusion of the type of assets described in PNPM 94 (personal residences, artwork, vehicles for personal use, jewelry, and other personal property not used for income-producing purposes). These items can be excluded from regularly prepared balance sheets and do not need to be included in pro forma balance sheets.

In contrast, the items in the parenthetical in PNPM 94 that must be included in the pro forma all fall into one of the three categories you identified from 801.11(d). Investment assets are defined at 801.1(i)(2). Voting securities are defined at 801.1(f) and include options and warrants (see Example 2). Income-producing property captures assets that are held for investment or for the production of income, regardless of whether they are currently producing income. The explanation of 801.11(d) in the 1978 SBP is an additional resource for understanding the scope of what natural persons are required to include.

Please feel free to let me know if you have further questions.

Best regards,  
Kristin

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Kristin Shaffer  
Attorney  
Premerger Notification Office  
Federal Trade Commission  
202-326-3434 | [kshaffer@ftc.gov](mailto:kshaffer@ftc.gov)

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**From:** [REDACTED]  
**Sent:** Tuesday, April 19, 2016 2:48 PM  
**To:** Walsh, Kathryn E.  
**Cc:** [REDACTED]  
**Subject:** Natural Person - clarifications on SoP analysis

Hi, Kate:

We're hoping to get clarification on what assets to include when determining a natural person's size for the Size of Person Test. We thought we understood based on the rules but two interpretations are causing us a little confusion. The natural person here does not control any entities.

We understand the following:

1. Where the natural person has a regularly prepared balance sheet, the total assets will include the value of all assets listed on the balance sheet, less the value of any personal property. Any assets held by the natural

person but not reflected on the natural person's balance sheet need not be added to the total assets on the balance sheet for purposes of the Size of Person test.

2. Where the natural person does not have a regularly prepared balance sheet, but is certain that he exceeds (or does not exceed) the relevant Size of Person threshold, he need not prepare a pro forma balance sheet. If the Size of Person test is met, he will need to stipulate in Item 4(b) of the Form as to that fact.
3. Where the natural person does not have a regularly prepared balance sheet, and is not certain whether the relevant Size of Person threshold is or is not met, he must prepare a pro forma balance sheet. In doing so, 801.11(e) governs and he must include the value of all assets held at the time of the acquisition, but exclude any cash used for the acquisition, expenses incidental to the acquisition, and the value of any securities (voting or non-voting) in the acquired person that he already holds.
4. Under all circumstances, 801.11(d) limits the assets to be included in determining the total assets of a natural person to (i) investment assets, (ii) voting securities, and (iii) income-producing property.

We want to make sure we're understanding the above correctly, however, given the following interpretations:

- Per #94 of the Premerger Notification Practice Manual (Fifth) ("PNPM"), if a natural person has a regularly prepared balance sheet and does not control any other entities, that person would use the total asset figure reflected on his or her last regularly prepared balance sheet, less exclusions for personal property.
  - **Given the limitation in 801.11(d), is it correct to say only those line items on the balance sheet that reflect investment assets, voting securities and other income-producing property are counted for purposes of determining the person's size? I.e., non-voting securities, options, and warrants listed on the balance sheet should not be included in determining the person's size? Would those items only be included if they currently produce income (for example, a non-voting security might carry with it some income stream, but an option may not actually produce "income" unless it is eventually exercised at a favorable price).**
- Per PNPM #94, where a natural person does not have a regularly prepared balance sheet and does not control any entities, that person will need to create a pro forma balance sheet to determine her asset size in accordance with Section 801.11(e). While we understand that the value of securities (voting or non-voting) of the acquired person that are already held by the natural person may be excluded, the interpretation indicates that the value of any minority holdings in entities other than the acquired person should be included and it specifically calls out in a parenthetical "voting and non-voting securities, non-corporate interests, warrants and options, bonds, etc." (see PNPM #94 at p.168).
  - **Given that 801.11(d) limits what is included in a natural person's size to investment assets, voting securities, and other income-producing property, could you help us understand why/when the items in the parenthetical should be included in the pro forma since they are not "voting securities?" Are non-voting securities, options, and warrants considered by the PNO to be "investment assets" or "other income producing property"?**

Thanks so much for your guidance on this.

Best,

