

## Sheinberg, Samuel I.

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**From:** [REDACTED]  
**Sent:** Wednesday, April 03, 2019 9:14 AM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Biagioli, Kimberley; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne  
**Subject:** FW: 801.10 and 802.4 Questions

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**From:** Whitehead, Nora  
**Sent:** Wednesday, April 3, 2019 9:14:23 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: 801.10 and 802.4 Questions

[Please see below.](#)

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** Tuesday, April 2, 2019 1:34:21 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Subject:** 801.10 and 802.4 Questions

Dear PNO Team:

I am writing to seek confirmation and/or clarification on the treatment of assumed debt and the calculation of the transaction value for purposes of determining whether the size-of-transaction exceeds the \$90 million threshold.

Assume LLC B proposes to merge with and into LLC A with LLC A being the surviving entity (the "Proposed Merger"). For purposes of this inquiry, assume that LLC A and LLC B are both their own ultimate parent entities and that the size-of-person test is satisfied. As part of the Proposed Merger, LLC A and LLC B have negotiated an Agreement and Plan of Merger which provides that the merger consideration to be paid by LLC A to the members of LLC B (the "B Members") will be a \$1 for \$1 issuance with each B Member receiving \$1 of capital credits and equity interests in LLC A for each \$1 of capital credits and equity interests each B Member holds in LLC B as of the closing date of the Proposed Merger. Based on the inclusion of the consideration provisions in the Agreement and Plan of Merger, the acquisition price has been determined even though the exact acquisition price will not be known until immediately before the closing date. If the PNO team disagrees with this position, please advise.

Based on current projections, it is expected that the acquisition price will be around \$123 million which will exceed the current filing threshold and therefore, the Proposed Merger is a reportable transaction unless exemptions and exclusions bring the acquisition price below the current filing threshold. My inquiries relate to the application of certain exemptions and exclusions and are set forth below:

