

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Thursday, October 22, 2020 9:38 AM
To: Walsh, Kathryn E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject: FW: Size of Person Test

From: Berg, Karen E.
Sent: Thursday, October 22, 2020 9:38:27 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Size of Person Test

Confirmed.

From: [REDACTED]
Sent: Wednesday, October 21, 2020 4:41:07 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Size of Person Test

Hi folks.

I am writing to confirm that the informal interpretation printed below still reflects the PNO's position on this issue.

Specifically Fund's regularly prepared balance sheet does not include a line item for unfunded capital commitments and does not include this amount when it lists the Fund's total assets. However, the footnotes to such balance sheet do describe the unfunded capital commitments.

We understand that under Informal Interpretation #1501003 we would not have to include or consider such unfunded capital commitments when assessing whether the Fund satisfies the HSR size of person test because they are not listed in a line item in the balance sheet.

Do you agree?

Thanks for your help.

[REDACTED]

1501003 Informal Interpretation

DATE: January 28, 2015

Tags:

RULE:

Size of person – assets determination

STAFF:

Kathryn E Walsh

RESPONSE/COMMENTS:

the PNO position is that once assets are listed on the balance sheet, there is little flexibility in the total asset calculation. **You must include the line item.**

QUESTION

From: Walsh, Kathryn E.
Sent: Wednesday, January 28, 2015 9:42 AM
To: (Redacted)
Cc: (Redacted),
Subject: Berg, Karen E.; Gillis, Diana L.

RE: HSR/size of person question

(Redacted) - the PNO position is that once assets are listed on the balance sheet, there is little flexibility in the total asset calculation. You must include the line item.

From: (Redacted)
Sent: Tuesday, January 27, 2015 3:02PM
To: Walsh, Kathryn E.
Cc: (Redacted)

Subject: HSR/size of person question

Hi Kate,

I hope all is well with you in the new year. We are conducting an HSR analysis and have a question for you with respect to the size of person test, which will apply to our transaction. Specifically, buyer is an investment fund that has been in existence for a couple of years, but has not yet made any investments. It does have regularly prepared financial statements, so we are aware that we must include any cash/cash equivalents that will be used to fund the acquisition in determining the buyer's "size." **However, the most recent regularly prepared balance sheet includes a line item for "unfunded capital commitments." We understand these to be investor commitments to the fund that may be satisfied over time as the fund makes capital calls on the investors.** It is possible that not all of the committed capital will be drawn if the fund does not find suitable investment opportunities over a specified period of time. We want to confirm whether we need to include the value of these unfunded capital commitments when calculating the party's size for the size of person test. Thank you in advance for your guidance. And please let us know if there are any additional details that would be relevant to your conclusion.

[Redacted signature block]

