

## Sheinberg, Samuel I.

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**From:** Sheinberg, Samuel I.  
**Sent:** Wednesday, December 6, 2023 11:28 AM  
**To:** [REDACTED]  
**Cc:** HSRHelp  
**Subject:** RE: 801.2 Acquiring Person and Acquired Person Question

We agree with your analysis.

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**From:** HSRHelp <HSRHelp@ftc.gov>  
**Sent:** Tuesday, December 5, 2023 4:11 PM  
**To:** Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>; Burton, June <jburton@ftc.gov>; Larson, Peter <plarson@ftc.gov>  
**Subject:** FW: 801.2 Acquiring Person and Acquired Person Question

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**From:** [REDACTED]  
**Sent:** Tuesday, December 5, 2023 4:10:15 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** 801.2 Acquiring Person and Acquired Person Question

Hello,

We are preparing a premerger notification in connection with a merger between two federally insured, state-chartered credit unions whereby the merging credit union ("Credit Union A") will merge into and with the surviving credit union ("Credit Union B"). Credit Union A has assets of \$1.7M and Credit Union B has of \$890K. Credit Union A will transfer all of its assets, rights and properties to Credit Union B, under Credit Union B's charter. Credit Union B will issue all members of Credit Union A the same amount of Credit Union B's membership shares as they hold in Credit Union A as of the effective date of the merger, and each loan borrower of Credit Union A as of the effective date of the merger shall have the same rights and privileges it did prior to the effective time of the merger. The financial ownership interests of members in each credit union shall continue after the merger in the newly combined credit union. As of the date of the merger the corporate existence of Credit Union A shall cease and the corporate existence of Credit Union B shall continue. No new entity is being formed as part of the merger transaction.

Once the merger has been effectuated, the parties have agreed to the following:

- the newly combined entity will use the name Credit Union A;
- the headquarters of the newly combined credit union shall be at the headquarters of Credit Union A, though the headquarters of Credit Union B will be used as an annex of the newly combined entity;
- the articles of incorporation of Credit Union B will be the articles of incorporation of the newly combined credit union;
- the Board of Directors of this newly combined entity will consist of 3 Directors of Credit Union B and 8 Directors of Credit Union A;
- the Chairman and Vice Chairman of the Board of the newly combined credit union shall be the Chairman and Vice Chairman of the Board of Credit Union A; the Secretary/Treasurer of the Board shall be designed by Credit Union B;

- the Supervisory Committee of the newly combined credit union shall consist of 2 members of Credit Union B and 4 members of Credit Union A;
- the Governance Committee of the newly combined credit union shall consist of 2 members of Credit Union B and 3 members of Credit Union A;
- the officers of the newly combined credit union shall be as follows: The CEO, the CFO and the CIO will be executive officers from Credit Union A; the Chief Experience Officer, the Chief Risk Officer, Chief Member Officer, and SVP of Special Projects shall be executive officers from Credit Union B.

12 CFR 801.2(d)(1)(ii) indicates that in a merger the designated surviving corporation in the plan which was in existence prior to the consummation of the merger, is deemed to have made the acquisition. 12 CFR 801.2(d)(2)(i) states that any party to a merger that holds assets or voting securities which it did not hold prior to the transaction is an acquiring person. 12 CFR 801.2(d)(2)(ii) states that any party to a merger whose assets or voting securities will be held by another person following the transaction is considered an acquired person. 12 CFR 801.2(d)(iii) indicates that when all parties to a transaction lose their separate pre-acquisition identities or become wholly owned subsidiaries of a newly formed entity, then all parties of the transaction shall be both the acquiring and the acquired person. In the present scenario, no new entity is being formed and Credit Union B is not losing its separate identity

In connection with our filing of the Notice, we believe that Credit Union A should be filing as the acquired entity and that Credit Union B should be filing as the acquiring entity based on the structure of the merger. However, given the post-closing governance structure of the parties, we wanted to confirm with you that our understanding is correct.

Thank you in advance for your assistance.

[Redacted]

[Redacted]

[Redacted]