

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Monday, February 10, 2025 9:43 AM  
**To:** HSR Auto Forward List  
**Subject:** FW: Mandatory Holding Period and Beneficial Ownership

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**From:** Whitehead, Nora  
**Sent:** Monday, February 10, 2025 9:43:04 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp  
**Subject:** RE: Mandatory Holding Period and Beneficial Ownership

The RSUs you describe are reportable at the time of receipt. The factors you mention are those to be considered in analyzing the transfer of beneficial ownership and are not a list of necessary conditions.

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**From:** HSRHelp  
**Sent:** Friday, February 7, 2025 2:12 PM  
**To:** HSR Auto Forward List  
**Subject:** FW: Mandatory Holding Period and Beneficial Ownership

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**From:** [REDACTED]  
**Sent:** Friday, February 7, 2025 2:11:25 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp  
**Subject:** Mandatory Holding Period and Beneficial Ownership

PNO Team,

We are seeking confirmation on whether an executive who receives voting securities subject to a mandatory holding period has “beneficial ownership” under the HSR rules. Upon the conversion of certain restricted stock units (RSUs), the executive will receive voting securities but will be restricted from selling or otherwise disposing of them for one year. The HSR Act provides that, unless otherwise exempt, an acquisition of voting securities is subject to the notification requirements of the Act if, as a result of the acquisition, the recipient “holds” voting securities valued in excess of the then-effective thresholds. 15 U.S.C. § 18a(a). A shareholder is deemed to “hold” voting securities only if they have “beneficial ownership, whether direct or indirect through fiduciaries, agents, controlled entities, or other means.” 16 C.F.R. § 801.1(c)(1). The Statement of Basis and Purpose for the HSR Rules and Regulations clarifies that “[T]he existence of beneficial ownership is to be determined in the context of particular cases with reference to the person or persons that enjoy the indicia of beneficial ownership, which include the right to obtain the benefit of any increase in value or dividends, the risk of loss of value, the right to vote the stock or to determine who may vote the stock, **the investment discretion (including the power to dispose of the stock).**” 43 Fed. Reg. 33,450, 33,458 (July 31, 1978)(emphasis added). While the executive benefits from any increase and bears the risk of loss in the voting securities, as well as retains voting rights, they lack the ability to dispose of the securities. Consequently, the executive cannot immediately sell the securities to negate their HSR notification obligation, nor can they decide to sell at any point before the one-year holding period expires. Since the executive does not have investment discretion or the ability to dispose of the stock during this period, the voting securities do not fully meet the criteria for beneficial ownership. Accordingly, it appears that the executive only gains beneficial ownership upon the expiration of the holding period. Can you confirm?

Best regards,

[REDACTED]

[REDACTED]

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[REDACTED]