

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, October 18, 2022 11:39 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle
Subject: FW: 802.2(h) -- Warehouse Exemption Question

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Tuesday, October 18, 2022 11:39:08 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: 802.2(h) -- Warehouse Exemption Question

We agree that the exemption is available to Buyer B as long as B will act only as a landlord relating to the warehouse property and the structure of the transaction was not undertaken to avoid HSR filing. Please reference the nonreportable transaction in Item 3a of the reportable one.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Monday, October 17, 2022 10:48 AM
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>
Subject: FW: 802.2(h) -- Warehouse Exemption Question

From: [REDACTED]
Sent: Monday, October 17, 2022 10:48:00 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: 802.2(h) -- Warehouse Exemption Question

Good morning,

I wanted to confirm the availability of the warehouse real property exemption under 16 CFR 802.2(h) and in particular, clarify whether the exclusion for "when the ... warehouse is to be acquired in an acquisition of a business conducted on the real property" applies to the following situation.

Pursuant to an agreement, Buyer A intends to acquire from UPE A (and a Minority Owner) a business conducted in the subject warehouse ("Distribution Business Transaction").

Pursuant to a separate transaction agreement, Buyer B (an affiliate of Buyer A, but not an entity within the same Person as Buyer A) intends to acquire (i) the warehouse improvements from the same UPE A and (ii) the real property on which the warehouse sits from UPE B ("Real Estate Transaction").

The Distribution Business Transaction and Real Estate Transaction are contingent on one another.

Buyer A's Distribution Business Transaction will be reportable under the HSR Act.

In light of (i) Buyer A and Buyer B being related but separate UPE's under the HSR Act Rules and (ii) Buyer B not acquiring the business conducted in the warehouse, do you agree that 16 CFR 802.2(h) is available to exempt both the value of the warehouse improvements and the real estate in the Real Estate Transaction?

[Redacted text]

[Redacted text]