

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Thursday, March 10, 2022 3:43 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne  
**Subject:** FW: Question Regarding Application of 802.5

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**From:** Whitehead, Nora <nwhitehead@ftc.gov>  
**Sent:** Thursday, March 10, 2022 3:42:47 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Question Regarding Application of 802.5

We agree.

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**From:** HSRHelp <HSRHelp@ftc.gov>  
**Sent:** Thursday, March 10, 2022 1:50 PM  
**To:** Walsh, Kathryn E. <kwash@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>  
**Subject:** FW: Question Regarding Application of 802.5

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**From:** [REDACTED]  
**Sent:** Thursday, March 10, 2022 1:49:27 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Cc:** [REDACTED]  
**Subject:** Question Regarding Application of 802.5

Dear PNO Staff:

I am writing to confirm that 802.5 - Acquisitions of investment rental property assets applies to the following proposed transaction.

X intends to acquire real property assets from Y (land, along with a commercial building and fixtures on the land). Currently, a third party, A, leases these assets from X pursuant to a 100% triple net lease, which means that A pays for all of the expenses of the property, including real estate taxes, building insurance, and maintenance. A operates a data center business on the property.

By way of background, Y constructed the data center for A in accordance with the terms of the triple net lease, and A then spent significant capital fitting out the space in order to meet its operational requirements for a data center. Under the terms of the lease, Y neither participates in the operation of A's business nor operates any other business on the property, other than collecting fixed monthly rent from A, as a landlord. A operates the data center and maintains the non-structural elements of the property, is responsible for all security at the property, and pays all costs of operating the property, including costs of electricity, HVAC service and security costs.

Post-acquisition, X will continue to lease the property only to A (whose lease has more than 7 years of term left, and over 17 years of term left if it exercises its extension options), and upon expiration of the lease to other third parties. X will not acquire the data center business or assets, will not participate in the operation of the data center business, and will not operate any business on the property, other than collecting rent as a landlord.

We think this transaction is clearly distinguishable from the facts presented in the Informal Staff Opinion 1609066, where the party requesting guidance was operating a wholesale data center business, where it leased the property to multiple third party customers, had multiple income streams, managed the HVAC and electrical systems at the property and was responsible for ensuring the physical security of the data center. In the instant transaction, X will not be a data center operator, will not manage the HVAC and electrical systems at the premises and will not be responsible for

ensuring the physical security of the data center. In addition, X will have only one income stream following the closing – the fixed monthly rent payable under the triple net lease.

Based on this, we believe that this proposed transaction satisfies the requirements set forth in 16 C.F.R. § 802.5 – Acquisitions of investment rental property assets and thus is exempt from the HSR notification filing process. Do you agree?

Regards,

[Redacted signature]

[Redacted signature]

[Redacted signature]

[Redacted signature]