

Sheinberg, Samuel I.

From: Sheinberg, Samuel I.
Sent: Tuesday, May 29, 2018 9:31 AM
To: [REDACTED]
Subject: RE: Question about 802.9

[REDACTED]

In all instances involving acquisitions solely for the purpose of investment, the burden is on the investor to demonstrate that its intent is truly passive, e.g., that it has no intention of participating in the formulation, determination, or direction of the basic business decisions of the acquired issuer, including outsourcing such functions to a manager. That said, the facts you have presented do not preclude the use of 802.9.

Sam

From: [REDACTED]
Sent: Friday, May 25, 2018 4:41 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Carson, Timothy; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora
Subject: FW: Question about 802.9

From: [REDACTED]
Sent: Friday, May 25, 2018 4:41:09 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Question about 802.9

Dear PNO:

This question relates to 802.9 and voting securities that will be acquired by an officer/director of a corporate entity upon the retirement of that officer/director.

Mr. X is the chairman and CEO of issuer Y. Mr. X is retiring from those positions. At the time of or shortly after retirement and in connection with his retirement, Mr. X will receive voting securities of Y.

From the time of his retirement (and at the time of or prior to the acquisition in question), however, Mr. X will no longer be an officer or director of the company or have any intention to participate in or influence the business decisions of the company. Because the test under 802.9 is intent at the time of acquisition, we believe Mr. X will satisfy the requirements for the 16 CFR 802.9 exemption, despite his current status as an officer and director of Y. Please let us know if that is consistent with the PNO's view.

Thank you.

[Redacted]

[Redacted]