

Sheinberg, Samuel I.

From: HSRHelp
Sent: Wednesday, September 7, 2022 3:13 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle
Subject: FW: Question regarding 802.52

From: Whitehead, Nora <nwhitehead@ftc.gov>
Sent: Wednesday, September 7, 2022 3:13:21 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: Question regarding 802.52

Based on the facts presented, we agree.

From: HSRHelp <HSRHelp@ftc.gov>
Sent: Tuesday, September 6, 2022 4:33 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>
Subject: FW: Question regarding 802.52

From: [REDACTED]
Sent: Tuesday, September 6, 2022 4:32:32 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Cc: [REDACTED]
Subject: Question regarding 802.52

Dear all,

We are writing regarding the application of 802.52.

The facts are as follows:

An entity (with banking operations) controlled by a certain EU Member State ("Member State X") proposes to acquire 50% or more of the voting securities of Company A. You can assume that size-of-transaction and size-of-person tests will be fulfilled, and that Company A has sufficient U.S. assets and revenues such that 802.51 would not apply.

Company A is headquartered in a certain country that is a member of the European Union ("Member State X") and is registered in Member State X. The company is a major utility provider in Member State X and is currently under financial pressure.

Company A is organized as a *societas Europaea* ("SE") entity which is a business structure for public limited companies under EU law. The SE scheme is set up through a certain EU regulation (Council Regulation (EC) No 2157/2001) which has automatic binding legal force throughout every Member State, including Member State X.

The EU regulations establishing the SE scheme still leave some gaps in areas of corporate law which must be filled by the company law of the member state where the company is registered. These include:

Accounting principles for financial reporting are set by the country

The country's law applies in the event of insolvency or regular dissolution

Taxes must be paid in the country of registration

Violations of the governing EU law by the company are enforced by the country

Thus, for Company A, an SE registered in Member State X, the laws of Member State X (which includes the incorporated provisions of Council Regulation (EC) No 2157/2001) governs, and Member State X's national company law explicitly governs in areas such as taxation, insolvency, and enforcement.

For the reasons discussed above, we believe that Company A is an entity "organized under the laws of" Member State X for purposes of Rule 802.52, and as a result, we would view the transaction as exempt under Rule 802.52.

Can you please let us know if you agree with this position?

Thanks,

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[Redacted line]

[Redacted signature block]

[Redacted signature block]

[Redacted line]

[Redacted line]