

Shelberg, Samuel L.

**From:** HSRHelp  
**Sent:** Tuesday, October 18, 2022 11:39 AM  
**To:** Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musinko, Veronika <vmusinko@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Nora <nwhit@ftc.gov>;  
**Subject:** FW: 802.2(h) -- Warehouse Exemption Question

**From:** Musinko, Veronika <vmusinko@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 as a nonreportable transaction in [REDACTED].

**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>; Musinko, Veronika <vmusinko@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Nora <nwhit@ftc.gov>;  
**Subject:** FW: 802.2(h) -- Warehouse Exemption Question

**From:** [REDACTED]  
**Sent:** Monday, October 17, 2022 10:48 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 and clarify whether the phrase "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 [REDACTED] (the "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 (the "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 affiliated persons and (ii) Buyer B's acquisition of the real property on which the warehouse sits from UPE B, do you agree that 10 CFR 802.2(h) is available to exempt both the value of the warehouse improvements and the real estate from the Real Estate Transaction?

