

## Sheinberg, Samuel I.

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**From:** Sheinberg, Samuel I.  
**Sent:** Thursday, December 23, 2021 4:31 PM  
**To:** [REDACTED]  
**Cc:** HSRHelp  
**Subject:** RE: 802.2(h) Interpretation Request

We agree that the acquisition of the flea market assets are exempt, but disagree that the other assets you characterize as “incidental” are exempt and you should value them.

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**From:** HSRHelp <HSRHelp@ftc.gov>  
**Sent:** Thursday, December 23, 2021 1:28 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>  
**Subject:** FW: 802.2(h) Interpretation Request

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**From:** [REDACTED]  
**Sent:** Thursday, December 23, 2021 1:27:50 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Cc:** [REDACTED]  
**Subject:** 802.2(h) Interpretation Request

Dear PNO,

We are writing to confirm that an acquisition of flea markets would be exempt under 16 CFR §802.2(h) as an acquisition of retail rental space.

Flea markets are physical, typically open-air marketplaces where vendors sell new and used goods. The vast majority of the target company’s assets consist of real property – specifically, structures and open lots – that it operates as flea markets. Similar to shopping centers, space and booths on the flea market properties are rented out to third-party vendors on short- and long-term basis, and the company collects rent payments from the third-party vendors. As a result, we believe that the company’s flea market assets are exempt retail rental space assets under 16 CFR §802.2(h).

The majority of the target company’s revenues is derived from renting space to third-party vendors. The company also collects revenues from (i) admission and parking fees at certain flea market locations, (ii) some concession stands that it operates itself at certain flea market locations, and (iii) some attractions that it operates itself at certain flea market locations (e.g., rides and games). We believe that these assets are incidental to ownership of exempt retail rental space assets because the primary purpose of these assets is to attract customers to the retail rental space – the vendors’ businesses at the flea markets – and therefore these assets are also exempt under 16 CFR §802.2(h).

Could you please confirm that you agree with this analysis? As always, thank you for your guidance.

[REDACTED]

[REDACTED]

[REDACTED]