

**Sheinberg, Samuel I.**

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**From:** HSRHelp  
**Sent:** Thursday, October 5, 2023 1:26 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle; Burton, June  
**Subject:** FW: HSR Analysis

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**From:** Whitehead, Nora <nwhitehead@ftc.gov>  
**Sent:** Thursday, October 5, 2023 1:25:46 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: HSR Analysis

Based on the facts provided, 802.2(a) is not available.

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**From:** [REDACTED]  
**Sent:** Thursday, October 5, 2023 10:51:42 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Cc:** [REDACTED]  
**Subject:** HSR Analysis

Dear FTC Staff – we would be grateful for your views on the following:

Buyer plans to acquire 50% of the membership interests of Target (an LLC) from Seller (which gives Buyer the right to 50% of the profits or assets upon dissolution of Seller) for a total purchase price exceeding \$111.4 million. The remaining 50% will continue to be held by Seller. Target indirectly controls an energy project company, the only tangible asset of which is land, some of which is owned and some of which is leased from a third party. The land has not generated any revenue in the past 3 years. Target has secured construction contracts and begun work to construct a solar energy project. Target will not have generated any revenue (other than possibly testing revenue) prior to closing. Target has also secured certain approvals for the energy project to interconnect and transmit electric power to the transmission grid once the project is completed and operational. It is a condition precedent to the obligation of Buyer to close that the project be operational, which is expected to occur shortly before closing. Seller initiated the construction of the energy project with the intent to sell a portion of its interest in the project.

Based on these facts, are we correct that the value of the equity in the Target that controls the project company that is being acquired is exempt from the HSR Act pursuant to 16 C.F.R. § 802.2(a), where Buyer is acquiring 50% of the membership interests of Target (which gives Buyer the right to 50% of the profits or assets upon dissolution of Seller)?

Thank you,

[REDACTED]

