

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Friday, May 17, 2024 3:15 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle; Burton, June; Larson, Peter  
**Subject:** FW: 802.9 Query

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Friday, May 17, 2024 3:15:08 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: 802.9 Query

[REDACTED]

We view these facts as incompatible with 802.9.

Best regards,  
Kristin

**Kristin Shaffer**

Attorney  
Premerger Notification Office  
Federal Trade Commission  
202-326-2388 | [kshaffer@ftc.gov](mailto:kshaffer@ftc.gov)

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**From:** [REDACTED]  
**Sent:** Friday, May 17, 2024 11:52:16 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Cc:** [REDACTED]  
**Subject:** 802.9 Query

All – Apologies if you’re getting this twice, I thought I sent this out earlier, realized I hadn’t heard back and it’s not in my sent. We have an HSR reportability question that we believe would be exempt under 802.9. The transaction involves two parties: Party A and Party B. Party A is a foreign person. Party B is a US person and public issuer. As part of the transaction, Party A will be acquiring substantially less than 10% of Party B’s issued and outstanding voting shares, but valued in excess of \$119.5m. Party A is not a competitor of Party B, will not be nominating a candidate for the board of directors of Party B (or any subsidiary of Party B); does not intend to propose corporate action requiring shareholder approval; does not intend to solicit proxies; and is not being granted a board seat on Party B or any subsidiary of Party B. More generally, Party A does not intend to participate in the formulation or determination of Party B’s basic business decisions. We believe that the HSR “passive” exemption is available for Party A’s acquisition of Party B’s shares, but wanted to confirm in light of other commercial arrangements between the parties.

### Other Commercial Arrangements/Investments

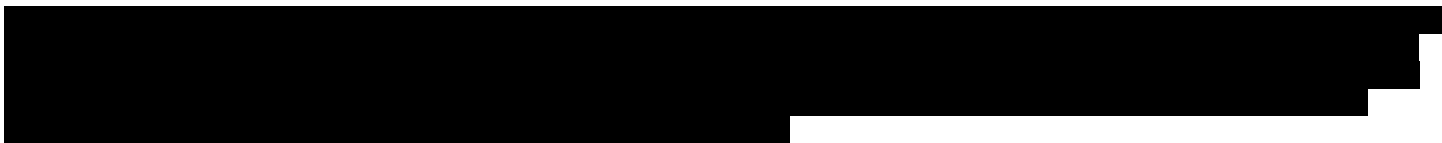
Party A and Party B will engage in three other transactions outside of the US. None of these transactions are HSR reportable or give Party A any control over a Party B controlled business.

1- **Manufacturing JV:** Party B will form a manufacturing entity outside of the US. Party A will have a passive 12.5% interest in the entity. Party A will not have a board seat in this entity. Products manufactured by the Manufacturing Entity are primarily intended to be sold outside of the US.

2- **R&D JV:** Party A will form an R&D entity outside of the US. Party B will have a 49% interest in this entity, along with one out of three board seats. The entity will be controlled by Party A.

3- **Supply Arrangement:** Party B will be supplying to Party A with certain products pursuant to a series of commercial agreements (Party A is already a customer of Party B).

Many thanks,

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