From:	▮▮▮▮▮▮
Sent:	Thursday, January 21, 2021 1:04 PM
To:	Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina
Subject:	FW: HSR 802.5 Exemption

From: Walsh, Kathryn E.
Sent: Thursday, January 21, 2021 1:03:57 PM (UTC-05:00) Eastern Time (US & Canada)
To: ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮
Cc: ▮▮▮▮▮▮▮▮
Subject: FW: HSR 802.5 Exemption

We agree with your analysis.

From: ▮▮▮▮▮▮▮▮▮▮
Sent: Wednesday, January 20, 2021 10:46:24 PM (UTC-05:00) Eastern Time (US & Canada)
To: ▮▮▮▮▮
Subject: HSR 802.5 Exemption

Dear All –

We have a transaction that we believe is exempt from the HSR reporting pursuant to 802.5 (the investment rental property exemption) (via 802.4) and would like your confirmation that this exemption applies.

Factual Background

Our client is acquiring a REIT "X" which owns certain real property consisting of buildings, outdoor spaces and parking facilities. The buildings and outdoor spaces are primarily used as soundstages and are rented (on varying short and long term bases) to film and media companies who use the space for filming purposes. In addition, the buildings include conference rooms, offices, dressing areas, dining areas, and rooms with various media equipment; some of these spaces are rented by tenants on an exclusive basis, while others are used by multiple tenants/rented on a short-term basis. Tenants typically bring in their own food. The parking facilities (for which X charges tenants) are used almost exclusively by tenants and those hired by tenants (film crews, etc.), and are operated by a third party.

Similar to a building landlord or mall owner, X provides various management services at its properties (sanitation, security, leasing) and power, HVAC, telephone and internet, for which tenants are charged. There is a "stage manager" whose role, similar to a building superintendent, is to oversee the daily operation.

While the majority of its revenue come from the above real estate operations, X also generates a limited amount of revenue from services that are performed by a taxable REIT subsidiary of X, as these services cannot be provided by X directly (the "Additional Services"). The Additional Services are <5% of total revenue.

Tenants also use lighting and grip equipment in connection with filming. X rents this equipment from third party operators and then passes through (at a mark-up) the equipment to the tenant. X also owns or leases a small amount of similar owned equipment that it rents directly to tenants, but this isn't the primary business model. In addition, X has a small sound recording facility where X provides sound production services to tenants to facilitate their use of the space, although X has generated negative net income from this service.

If we looked at the fair market value of the segment of the business providing the Additional Services, lighting and grip equipment rental and sound recording facility, it is well below $94 million. We understand that there could be assets that are not exempt – e.g. any trademarks or trade names – but understand that the addition of those assets would not bring the potential non-exempt assets over the threshold.

Analysis

We believe that the acquisition of X is covered under the 802.5 exemption (via 802.4) for acquisitions of investment rental property. The real property includes property that is currently rented or held out for rent to entities that are not within X's UPE (except for the sole purpose of maintaining, managing and supervising the operation of the property), common areas on the property, and assets incidental to the ownership of the exempt real property. To the extent that business is providing additional services, those services are ancillary to the rental business. Moreover, the value of the segment providing such services is below $94 million. To the extent buyer would acquire control of X, buyer would hold the property solely for rental and investment purposes, not to be involved in the business the tenants are conducting on the property, and to profit from leasing space – i.e., from being a landlord.