

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, November 9, 2021 3:51 PM
To: Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora
Subject: FW: 802.35

From: Shaffer, Kristin <kshaffer@ftc.gov>
Sent: Tuesday, November 9, 2021 3:50:29 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: RE: 802.35

[REDACTED]
We agree that this is exempt.

Best regards,
Kristin
Kristin Shaffer
Attorney
Premerger Notification Office
Federal Trade Commission
202-326-2388 | kshaffer@ftc.gov

From: [REDACTED]
Sent: Monday, November 8, 2021 1:44 PM
To: HSRHelp <HSRHelp@ftc.gov>
Subject: 802.35

Dear PNO:

I have a question about 802.35. The Company is an LLC, and the managers would like to establish an ESOP for its employees. To do so, they must convert the LLC into a stock company. It is disadvantageous from a tax perspective to do so directly, so they propose creating an S corp and a merger sub wholly owned by the S corp, have the ESOP acquire the S corp and then merge the LLC into the merger sub. The merger sub would be an entity within the ESOP when it acquires the LLC. The ESOP is a trust that meets the qualifications of Section 401 of the IRC. The ESOP is controlled by the LLC. And the S corp will have less than \$10 million in cash when it acquires the LLC.

Does this transaction qualify for the exemption under 802.35?

Thank you.

[REDACTED]

[REDACTED]

