

7A(a)(3)



Memorandum

To: Nancy Ovuka

Date: May 20, 2002

From: [Redacted]

Subject: Transaction Structure

Structure

Acquiring Company "A" will acquire (i) from various shareholders, 100% of the outstanding shares of common stock of acquired Company T ("T") (T is its own ultimate parent entity), (ii) from a trust (the "Trust"), 90% of Class A Units of an LLC ("LLC") (the Trust is, for this memo, assumed to be its own ultimate parent entity) and (iii) from natural person NP, 4% of the outstanding shares of common stock of Corporation B. Company T owns the remaining 96% of the outstanding shares of common stock of Corporation B. Corporation B conducts various operations and owns the remaining 10% of the Class A Units of LLC and 100% of Class B Units of LLC. LLC has no other units outstanding and conducts no business operations but owns 100% of corporation C. The structure is diagrammed on Appendix A.

Company A will pay an aggregate of approximately \$62 million to the stockholders of T and to the Trust and to NP for the stock of T, the 90% of the Class A units of LLC, the 4% of the shares of Corporation B not owned by Company T, respectively. Based on the revenues and net income derived from the operations of Corporations B and C, assume a fair allocation of the purchase price to be (i) 75% (\$46.5 million) for the stock of Company T and 4% of Corporation B and (ii) 25% (\$15.5 million) for the LLC interests owned by the Trust.

Analysis of Reportability

I believe that the latest informal interpretations issued by the Staff treat the acquisition of 100% of the membership interests of an LLC as the acquisition of the assets of the LLC. The transaction described above would then become, for HSR purposes, the acquisition by A of (i) 100% the voting interests of T and (ii) 100% of the assets of LLC.

Assuming for the purpose of this analysis that the Trust controls the LLC pursuant to Rule 801.1(b)(ii) by virtue of (a) Trust receiving more than 50% of the profits of LLC in each of the last several years (the distribution of the profits of LLC is based on the operating agreement of LLC which provides that 100% of the profits go initially to the holder of the B units and then, after a certain level, to the holders of the A units which has resulted in Trust receiving more than 50% of the profits of LLC in the last several years and will presumably receive more than 50% in 2002) and (b) Trust receiving more than 50% of the assets of LLC upon a liquidation (based on a assumed fair market value of the assets of the LLC of \$15.5 million (25% of \$62 million)).

Because the total transaction transaction described above is two separate transactions for HSR purposes (the acquisition of voting securities of an ultimate parent entity at a transaction valued at less than \$50 million and a separate acquisition of the assets of an LLC (which is not controlled by the ultimate parent entity whose voting securities are being acquired) also valued at less than \$50 million), I believe that the transaction would not be reportable. Further, even if LLC is controlled by

Company B (through its control of Corporation B), I believe that transaction would nonetheless not trigger a filing requirement.

As this transaction structure is rather complicated and the issues presented are complex, I would like to discuss this further with you. I can be reached at [REDACTED] and look forward to speaking with you. I would, if you would like, be happy to submit a more formal letter to the Staff either before or after we speak. Thanks for your time.

5/21
Advised writer
by telephone
that transaction is
not reportable.
RS & PS cover

Appendix A

