

801.11(e)

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EMA

October 17, 2002

Ms. Nancy Ovuka
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
6th Street and Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Ms. Ovuka:

I am writing to confirm the substance of our conversation and your advice earlier today.

As I described, we are trying to analyze the total assets of a newly organized limited liability company under 16 CFR 801.11(e)(1). I described the following facts:

1. Parent LLC is a newly-organized limited liability company with no regularly prepared balance sheet. Parent LLC is not controlled by any person and is its own ultimate parent entity. Parent LLC's assets consist of \$100 million cash.
2. Parent LLC desires to acquire assets from Seller for \$98 million.
3. For various tax and liability reasons, the acquisition will be structured as follows:
 - (a) Parent LLC will form Purchaser LLC, a newly-organized wholly-owned limited liability company. Parent LLC will contribute \$98 million to Purchaser LLC. Purchaser LLC will not have a regularly prepared balance sheet.
 - (b) Purchaser LLC will become the "purchaser" under an acquisition agreement with Seller.
 - (c) Prior to the acquisition, Purchaser LLC will deposit \$98 million in certificates of deposit with Bank. Bank will issue a \$98 million letter of credit in favor of Seller which Purchaser LLC will deliver as security for the note described

below. Purchaser LLC will pledge its certificates of deposit to Bank to secure the letter of credit.

- (d) Purchaser will buy the assets from Seller with a \$98 million 10-year promissory note. The promissory note will be secured by the letter of credit.
 - (e) Pursuant to the acquisition agreement, Seller will convey the assets directly to Parent LLC. At no time will Purchaser LLC hold title to the assets.
 - (f) Immediately after the closing of the acquisition, Parent LLC will sell its 100% membership interest in Purchaser LLC to an unrelated third party for nominal consideration.
4. At the end of the closing date:
- (a) Parent LLC will own \$2 million in cash and hold title to the acquired assets. Parent LLC will not have any interest in Purchaser LLC or the \$98 million in certificates of deposit.
 - (b) Purchaser LLC will be a wholly-owned subsidiary of the unrelated third party. Purchaser LLC will own \$98 million in certificates of deposit and be liable for a \$98 million promissory note payable to Seller. Purchaser LLC will not have any interest in the acquired assets.

You advised that, under the facts presented, the \$98 million held in certificates of deposit by Purchaser LLC would be considered to be consideration for the assets. Accordingly, the total assets of Parent LLC would be considered to be \$2 million (\$100 million cash, less the \$98 million).

Please call me at [REDACTED] to confirm whether I have accurately summarized our conversation and your advice. If I am not available, please call [REDACTED]

Sincerely,

[REDACTED]

cc: [REDACTED]

10/17/02
Confirmed advice
by phone.
MV concurs
nmm

[REDACTED]