

Verne, Michael

From: [Redacted]  
Sent: Tuesday, September 16, 2003 3:55 PM  
To: Verne, Michael  
Subject: HSR Question

Importance: High

Mike,

I hope you are well and enjoying the fall in DC.

I have a quick HSR question that I hope you can help me with.

Company A is a limited partnership owned 51% by Person B and 49% by Company C. Company A is going to spin off certain assets to a newly formed subsidiary LLC. The market value of the assets contributed will be \$68,000,000 although their book value may be less. The newly-formed LLC will also assume \$68,000,000 worth of liabilities of A so that upon the effectuation of the contribution, the new LLC will have a zero net worth. Promptly after the contribution to the limited liability company, A will distribute 100% of the membership interests in the limited liability company to a limited partner controlled by Company C. A has other business interests and will continue to be operated as in the past with no change in the respective partnership holdings.

Since the new LLC is 100% owned/controlled by Company A, this is effectively a transfer from A to C. Company C has over \$100 million in assets. Company A has over \$10 million in assets. Thus size of party tests would be met. However, since the new LLC has a net worth of zero, I would think that the stock in the LLC has zero value and that a transfer of the stock/membership interests from LLC to C would be valued at zero. Thus, the size of the transaction test would not be met. Would you agree?

Thanks very much for any thoughts.

Regards,

[Redacted signature block]

Tel: [Redacted]  
Fax: [Redacted]  
Mobile: [Redacted]

ADVISED THAT THIS IS TREATED AS AN ASSET ACQUISITION. THE SIZE OF TRANSACTION IS FAIR MARKET VALUE OF THE UNDERLYING ASSETS WITHOUT REGARD TO LIABILITIES. N. OVERKA CONCURS.

B. Michael [Signature]  
9/17/03