

[REDACTED]

BY FAX (202) 326-2624
AND REGULAR MAIL

June 8, 1999

Richard B. Smith
Premerger Notification Office
Federal Trade Commission
Pennsylvania Avenue
Washington DC 20580

Dear Dick:

I have a question concerning the reportability of a transaction intended to achieve a relatively simple result but which nevertheless presents some interesting questions. The transaction involves a three-member, owner-managed LLC which intends to redeem the interests of its largest member and then sell its assets to a third party.

Our client, ABC LLC (the "LLC"), has three members. Member A, a corporation, owns 55 percent of the LLC. Member B, an S corporation, owns 25 percent of the LLC; 70 percent of the shares of Member B are owned by an individual ("I-1"), and the remaining 30 percent of the shares are owned by another individual ("I-2"), who is unrelated to I-1. Member C, a newly-created¹ LLC (the "I-1/I-2 LLC"), owns 20 percent of ABC LLC; the ownership of Member C is identical to the ownership of Member B. The LLC holds assets valued at approximately \$18 million.

We have been asked for advice concerning the reportability of the proposed transaction. We believe that the redemption is not reportable, but that the sale of the LLC's assets to a third party is reportable. However, in view of the changing landscape with respect to the treatment of LLC-related transactions, we thought we would ask you to confirm our analysis.

Our reasoning is as follows. The Premerger Notification Office traditionally has treated owner-managed LLCs (like ABC) as more like partnerships than corporations. Partnership interests generally have been viewed as neither assets nor securities by the PNO, and therefore transfers of partnership interests are non-reportable even where, as here, a change in control

¹ Member C was recently created to ensure that after the redemption of Member A's interests the LLC will continue to have at least two members, as required by state statute.

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results. However, the PNO has taken a different position where the transfer results in 100 percent of the interests of a partnership being held by a single entity; such transactions have been viewed as the acquisition of the underlying assets previously held by the partnership.

Here, after the redemption of Member A's interests, the membership interests in the LLC will continue to be held by more than one entity: Member B (the S corporation owned by I-1 and I-2) will hold approximately 55 percent of the LLC, and Member C (the I-1/I-2 LLC) will hold approximately 45 percent.² As a result, the redemption should not be reportable, but Member B's and Member C's subsequent sale to a third party of the LLC's assets will be reportable.³

I would appreciate your confirming that our analysis is correct. Thank you for your assistance.

Very truly yours,



6/7/99 - advised partner that PNO office would conclude that I-1 holds 55% of LLC through control of Corp. B, but would not be deemed to hold the remaining 45% through control of I-1/I-2 LLC. Thus, I-1 does not hold 100% of LLC as a result of the redemption. Since I-1 is the only person controlling the LLC, only it would need to file as the original person for the sale of the LLC assets.
RBS/Smith + H/D/Deane

² Even if the structures of Members B and C were disregarded, the membership interests in the LLC still would be held by two unrelated entities - I-1 and I-2.

³ For purposes of presenting the questions above, we assume that the size of persons and size of transaction tests are met. However, some complicated questions (not presented above) may still cause the transaction to fall below the size tests.