

Verne, B. Michael

801.11(e)

From: [REDACTED]  
Sent: Wednesday, May 17, 2006 11:10 AM  
To: Verne, B. Michael  
Subject: Confirmation Email re Telephone Conversation of May 16, 2006

Mr. Verne

I am writing to confirm the results of our conversation on May 16, 2006. The transaction and the inquiry that we discussed are set forth below.

#### Background

A group of five to eight investors will contribute approximately \$8 million dollars to a newly-formed limited liability company ("Holdings LLC") in exchange for 100% of the membership interests therein. No single investor will be entitled to 50% or more of the profits of Holdings LLC or 50% or more of the assets of Holdings LLC upon liquidation. Accordingly, none of the investors will "control" Holdings LLC.

Holdings LLC is going to contribute the \$8 million to a newly formed limited liability company ("Acquisition LLC") in exchange for all 100% of the membership interests therein. As the sole member of Acquisition LLC, Holdings LLC will be the ultimate parent entity of Acquisition LLC. Acquisition LLC will acquire all of the assets of TargetCo for a purchase price in excess of \$56.7 million (but less than \$226.8 million). TargetCo is a company with annual net sales in excess of \$113.4 million. To acquire the subject assets, Acquisition LLC will use the \$8 million contributed by Holdings LLC and money borrowed from a financial institution for the purpose of making the acquisition. As newly formed entities, neither Holdings LLC nor Acquisition LLC will have any assets, with the exception of the membership interests of Acquisition LLC in the case of Holdings LLC and the contributed cash and borrowed money in the case of Acquisition LLC. Furthermore, neither Holdings LLC nor Acquisition LLC will have regularly prepared balance sheets.

#### Inquiry

Pursuant to CFR 801.11(e), if an entity does not have a regularly prepared balance sheet, such entity can exclude from its total assets all cash that is to be used in an acquisition of assets, including borrowed cash. The examples relating to 801.11(e) specifically contemplate a scenario in which a newly formed entity A borrows \$105 million to make a \$100 million acquisition. In that example, A is permitted to exclude the \$100 million of borrowed cash that it will use for the acquisition in its determination of its total assets. The example provides that A is its own UPE.

In the 801.11(e) example, the entity that is borrowing the cash is its own UPE. In the transaction described above, Acquisition LLC is the entity borrowing the cash and Holdings LLC is the UPE. On our call, I explained that it was my understanding that Holdings LLC, as the acquiring person, was entitled to exclude the cash that will be borrowed by Acquisition LLC from Holdings LLC's total assets for purposes of the size-of-person test. You indicated on the call that my understanding was correct. Now that you have had the opportunity to review the facts in writing, I respectfully request that you confirm that our analysis regarding the borrowed cash is correct.

Thank you for your attention to this matter.

AGREE -  
Bruchule  
5/17/06