

Ferkingstad, James H.

866.21

From: [REDACTED]  
Sent: Tuesday, May 23, 2006 11:50 AM  
To: Ferkingstad, James H.  
Subject: FW: HSR Size of the Party Test Follow Up

James -- below is the email I mistakenly sent to the wrong email address -- apologies. If you could review and let me know today it would be much appreciated. Best regards. Max

-----Original Message-----

From: [REDACTED]  
Sent: Monday, May 22, 2006 8:31 PM  
To: 'jfirkingstad@ftc.gov'  
Subject: HSR Size of the Party Test Follow Up

James -- in follow up to our telephonic conversation today regarding a client of ours who is contemplating an acquisition of assets I wanted to confirm in writing the facts and our conclusion below.

Our client is an acquisition vehicle that will be either a corporation or a partnership (LLC) and currently has no assets (the "Acquiror"). The shareholders/members of the Acquiror will contribute \$135MM in cash plus some additional cash for transaction expenses in order to effect an acquisition of assets from a selling party (the "Seller"). None of the shareholders/members of the Acquiror will have a right to 50% or more of the profits or assets of the Acquiror upon dissolution or otherwise, or the right to appoint 50% or more of the board of directors/managers of the Acquiror. The shareholders/members of the Acquiror are advised and managed by a common investment advisor.

The Acquiror will use substantially all of the cash contributed to it to purchase the assets from the Seller and to pay transaction expenses.

In our phone conversation you concurred with our conclusions, based on the above stated facts, that (1) the Acquiror is its own ultimate parent entity, (2) because substantially all contributed cash from its shareholders/members will be used for the purchase of the assets from the Seller and for transaction expenses, and given that the Acquiror has no other assets, the Acquiror does not satisfy the \$10MM size of the person test for a \$135MM transaction, and (3) therefore no filing under HSR is necessary for this transaction.

Would you please let me know if you agree that this accurately reflects our conversation and whether you agree with our conclusions based on the stated facts?

Thanks and best regards.

05/23 Agree  
JF

[REDACTED]

[REDACTED]

[REDACTED]