

FI 15

From: [REDACTED]
To: FTC.SER(US("mverne@ftc.gov"))

Please respond to the following question about an ambiguity under Formal Interpretation Number 15. Depending on your advice and any follow-up communications, I may later request in writing an informal interpretation pursuant to the HSR rules. Thank you in advance for your consideration of the following question.

SHEET 2

[REDACTED] limited liability company ("LLC") proposed to acquire B, another LLC, from

is its own OPE and which is a less than \$10 million person. (At the time of the proposed transaction, A will have no significant assets other than \$10 million in cash from Y to be used as consideration in purchasing B.) Y is a corporation that is controlled directly or indirectly by Z, a \$10 million person.

Pursuant to Formal Interpretation Number 15, an entity controls an existing LLC if it has "an interest entitling it to 50 percent of the profits or 50 percent of the assets upon dissolution." Under the A LLC Agreement, X is entitled to more than 50 percent of the profits of A and is therefore deemed to control A.

The more difficult question is whether Y also is deemed to control A. Under the A LLC Agreement, Y holds a convertible preferred membership in A. Y may convert its preferred membership to common membership at anytime for no additional consideration. Pursuant to the liquidation clause in the A LLC Agreement, upon dissolution of A, the preferred member first receives its initial capital

Under the above facts, the issue of Y's control of A turns on whether the A LLC Agreement "entitles" Y to 50 percent of the profits of A upon dissolution. The

is presently determinable. Otherwise the issue of "control" would have to be decided in all similar instances upon mere speculation.

Given that the A LLC Agreement does not entitle Y as a matter of contractual right to 50 percent of A's assets upon dissolution, and further given that whether Y ultimately may receive 50 percent of A's assets upon dissolution is

Thank you,



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