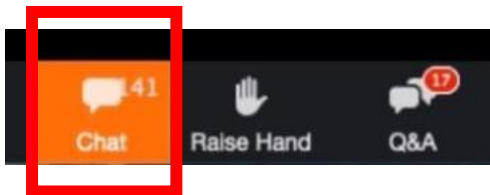


Copy of Today's Presentation

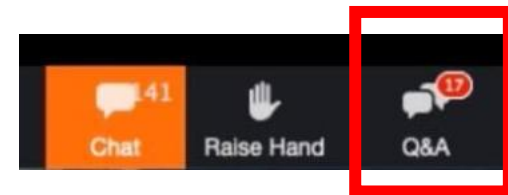
Please see the link posted in the Webinar **Chat** to download a copy of today's presentation.



Submitting Questions

Please use the Webinar **Q&A option** to submit your questions.

If we don't have time to answer them live today, we'll respond by email.





J.R. Bruno
& ASSOCIATES

EPC/OC CHALLENGES

ASK THE EXPERTS

December 10, 2020

PANELISTS

Guest:

- Jan Garlitz, Esq. Janice E. Garlitz, P.C.
 - jangarlitz@netzero.net

J. R. Bruno & Associates:

- Sanford (Sandy) Mortan, Senior Associate
- Richard Jeffrey, Senior Associate CDC Outreach
- Alex Liberchuk, President, J R Bruno & Associates

TODAY'S TOPIC

EPC/OC Challenges

Richard Jeffrey, Jan Garlitz and Sanford (Sandy) Mortan

EPC

- What's an EPC – Eligible Passive Company?
- SOP 50 10 6, p. 529, defines an EPC as: “A small entity or trust which does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's business and which complies with the conditions set forth in § 120.111,”
- An EPC “must use loan proceeds only to acquire or lease, and/or improve or renovate, real or personal property (including eligible refinancing), that it leases to one or more Operating Companies (OCs) for conducting the OC's business, or to finance a change of ownership between the existing owners of the EPC” (SOP 50 10 6, p. 133)

EPC/OC Rule

- Per SOP 50 10 6, page 133, the EPC Rule, 13 C.F.R. § 120.111 “is an exception to SBA regulations that prohibit financing assets that are held for their passive income. (13 CFR § 120.130(d)) Because the EPC rule is an exception, **the EPC and the OC must comply with all of the conditions in 13 CFR § 120.111 and each condition is interpreted strictly.** If all conditions are not complied with, in . . . 504, SBA may pursue a CDC Recovery Claim under 13 CFR § 120.938 in the case of fraud, negligence, or misrepresentation by the CDC.”

No Business Activity Other Than Leasing to OC

- With the exception of a trust EPC, an EPC “may **not** engage in any business activity other than leasing the property to the OC(s)” (SOP 50 10 6, p. 135)





APPLESEED REAL ESTATE HOLDINGS LLC

- Adam Appleseed has been working at Abel, Inc., an apple orchard with farm store in New Canaan, OH
 - Adam is not an owner of Abel, Inc., but does have some managerial experience
- Adam has the opportunity to buy Abel, Inc. – both business and orchard with store
- On the advice of his accountant and attorney, Adam forms a LLC, Appleseed Real Estate Holdings LLC, to buy the orchard and farm store and lease them to Abel, Inc.
 - Adam and his spouse, Evelyn, will own Appleseed Real Estate Holdings LLC
- Any problems with that for an EPC/OC 504 Loan?

APPLESEED REAL ESTATE HOLDINGS LLC

(2nd Location/Same OC)

- Adam now has the opportunity to purchase another apple orchard in Jerusalem, OH
- Adam and Eve are going to have Appleseed Real Estate Holdings LLC buy the Jerusalem orchard, build a farm store, and then lease both to Abel, Inc.
- Any problems with a second 504 Loan to Appleseed Real Estate Holdings LLC for Abel, Inc. for the Jerusalem orchard?



APPLESEED REAL ESTATE HOLDINGS LLC

(2nd Location/2nd OC)

- **NEW SCENARIO:** Adam has the opportunity to purchase another apple orchard in Jerusalem, OH
- On the advice of his accountant and attorney, Adam is going to form a new company, Cain, Inc., to operate this apple orchard
- Adam and Eve want Appleseed Real Estate Holdings LLC to buy the Jerusalem orchard, build a farm store, and then lease orchard and store to Cain, Inc.
- Any problems with a 504 Loan to Appleseed Real Estate Holdings LLC for Cain, Inc. when Appleseed Real Estate Holdings LLC already owns and leases the New Canaan orchard to Abel, Inc.?



APPLESEED REAL ESTATE HOLDINGS LLC (Properties Leased to non-OC and OC)

- **NEW SCENARIO:** Adam and Eve already owns Appleseed Real Estate Holdings LLC, which owns and leases a property to Apple Butter Corporation (no SBA Loan)
- Adam wants to buy an apple orchard and farm store in New Canaan, OH and has formed Abel, Inc. to operate the orchard and store
- Adam and Eve want Appleseed Real Estate Holdings LLC to buy and lease the apple orchard and store to Abel, Inc.
- Can Appleseed Real Estate Holdings LLC own and lease the orchard and farm store to Abel, Inc.?



APPLESEED REAL ESTATE HOLDINGS LLC

(Properties in Adjacent States and New OCs)

- **NEW SCENARIO:** Adam has two 504 Loans for his orchards in New Canaan and Jerusalem OH; his business is really taking off and he now has the opportunity to acquire 2 more orchards in Bethlehem, PA and Orchard Park, NY
- Adam is forming new corporations to operate the new orchards: Esau, Inc. and Jacob, Inc.
- Any problem with using Appleseed Real Estate Holdings LLC as the EPC for 504 Loans for these new orchards and new OCs?



APPLESEED REAL ESTATE HOLDINGS LLC (Properties Leased to OC and now Non-OCs)

- **NEW SCENARIO:** Adam is now making enough money that he no longer needs SBA loans to buy the PA and NY orchards
- Can Appleseed Real Estate Holdings LLC still own and lease the new orchards to Esau, Inc. and Jacob, Inc.?
- What impact, if any, does that have on Adam's existing 504 Loans?



APPLESEED REAL ESTATE HOLDINGS LLC

(Farm Stores Owned by New Entity)

- **NEW SCENARIO:** Adam's orchards are doing great and the farm stores even better selling fresh apples and Apple Butter Corporation's apple butter, applesauce, apple pies, apple crumbles, apple turnovers, apple tarts, candied apples, bacon fried apples, apple cakes, etc.
- Adam is thinking he should put ownership of the farm stores into a new corporation, Forbidden Apples, Inc., that is separate from his various operating businesses (Abel, Inc., Cain, Inc., Esau, Inc. and Jacob, Inc.)
- What are the issues for his existing 504 Loans with a second OC?



APPLESEED REAL ESTATE HOLDINGS LLC

(Lease to New Manufacturer)

- **NEW SCENARIO:** Adam has decided to start a new corporation, Apples Delicious, Inc., to make ice cream, caramel, cheddar cheese and other products to serve with apples
- Adam will need a manufacturing plant for Apples Delicious
- Can Appleseed Real Estate Holdings LLC own and lease the plant to Apples Delicious?
- Adam is adamant that all his properties be owned by the same holding company



ANSWERS

- Slide 8: Appleseed Real Estate Holdings LLC (EPC) and Abel, Inc. (OC) – OK
- Slide 9: Appleseed Real Estate Holdings LLC (EPC) and Abel, Inc. (OC) for second location – OK
- Slide 10: Appleseed Real Estate Holdings LLC (EPC) and Cain, Inc. (new OC) for second location – NOT OK; need new EPC for Cain, Inc.
- Slide 11: Appleseed Real Estate Holdings LLC (EPC) leases to Apple Butter Corporation (non-OC) and to Abel, Inc. (OC) for second location – NOT OK; Appleseed Real Estate Holdings LLC engages in other business, so need new EPC for Abel, Inc.
- Slide 12: Appleseed Real Estate Holdings LLC (EPC) leases to Esau, Inc. and Jacob, Inc. (new OCs) for locations in adjacent states – NOT OK; location makes no difference; need 2 new EPCs for Esau, Inc. and Jacob, Inc.

ANSWERS

- Slide 13: Appleseed Real Estate Holdings LLC (EPC) leases locations in Ohio to Abel, Inc. (OC) and wants to lease locations in adjacent states without SBA Loans to Esau, Inc. and Jacob, Inc. – NOT OK; Esau, Inc. and Jacob, Inc. are not OCs
 - If 504 Loans have already been made to Abel, Inc. for Ohio locations, then Appleseed Real Estate Holdings LLC leasing to Esau, Inc. and Jacob Inc. without SBA Loans is NOT OK technically, but SBA will not default the 504 Loans to Abel, Inc.
- Slide 14: Adam puts the farm stores into his new entity, Forbidden Apples, Inc. – Forbidden Apples, Inc. will need to guarantee the 504 Loans, EPC/OC lease will need to be amended to add second OC and, perhaps, CDC lien instruments will need to be amended

ANSWERS

- Slide 15: Appleseed Real Estate Holdings LLC (EPC) will own and lease a new manufacturing plant to Apples Delicious Inc. (non-OC) – NOT OK technically, but SBA will not default previous 504 Loans with Appleseed Real Estate Holdings, LLC as the EPC
- SOLUTION FOR ADAM AND EVE: Create Appleseed Holding Company of Holding Companies, Inc. to own all the EPCs and other real estate holding companies rather than Adam and Eve individually
- And the winner gets a Bacon Apple Pie!



Questions?

Thank you!

