

**ALI-ABA Course of Study  
Regulation D Offerings and Private Placements**

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**Association**      **Cosponsored by the Securities Law Committee of the Federal Bar**

**SAMPLE PRIVATE PLACEMENT MEMORANDUM**

**by**

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**PRIVATE PLACEMENT MEMORANDUM  
CONFIDENTIAL**

**\$110 Million Common Membership Units in ABC Holdings LLC Representing  
\$110 Million Mandatorily Redeemable Convertible  
Preferred Membership Units in Operating Company**

This is a private offering of common membership units of ABC Holdings LLC, a Delaware limited liability company (the "Company"). The Company is offering to a limited number of accredited investors common membership units ("units") in a private offering exempt from registration under federal securities laws upon the terms and conditions set forth in this memorandum ("Memorandum"). The minimum investment in the units is \$500,000, although Operating Company ("Operating Company") and the placement agent may accept an investment of a lesser amount. The Company will use all of the proceeds of this offering to acquire \$110 million of mandatorily redeemable convertible preferred membership units in the entities that will own the consumer brands and business of Operating Company. In certain contexts in this Memorandum, "Operating Company" also refers in general terms to the business of owning the consumer brands and other assets relating to the business as currently and historically operated under the Operating Company name.

The Company's preferred membership units in Operating Company will be entitled to quarterly distributions at an annual rate of 8.5% until the seventh anniversary of issuance and thereafter at an annual rate of 11% compounded quarterly. Distributions by Operating Company will be payable on February 15, 2006 (for the partial quarter) and thereafter on February 15, May 15, August 15 and November 15 of each year (or, if not a business day, the next succeeding business day). Distributions by the Company on the units will promptly follow such distributions to the Company. The preferred membership units may be redeemed by Operating Company after the seventh anniversary and must be redeemed by Operating Company after the tenth anniversary of issuance, in each case subject to payment by Operating Company of a premium in an amount sufficient to generate an 11% cumulative return, compounded quarterly, from the date of issuance. The Company expects to distribute to holders of units all proceeds received from Operating Company on account of the Company's preferred membership units. In the event of a qualified public offering by Operating Company, the Company's preferred membership units will be exchanged for shares of the issuer's common stock. The Company's preferred membership units will be evidenced by the issuance of preferred membership units in Operating Company, which are referred to as "Operating Company Preferred Membership Units" throughout this Memorandum.

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**AN INVESTMENT IN THE UNITS IS SPECULATIVE AND INVOLVES A HIGH DEGREE OF RISK. SEE "RISK FACTORS" FOR A DISCUSSION OF CERTAIN FACTORS THAT SHOULD BE CONSIDERED IN CONNECTION WITH ANY PURCHASE OF THE UNITS. THERE IS NO PUBLIC MARKET FOR ANY OF THE COMPANY'S SECURITIES AND NO SUCH MARKET IS EXPECTED TO DEVELOP FOLLOWING THE PLACEMENT OF THE UNITS. SIGNIFICANT RESTRICTIONS ON TRANSFER WILL APPLY. YOU SHOULD BE PREPARED TO BEAR THE ECONOMIC RISK OF YOUR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME AND BE ABLE TO WITHSTAND A TOTAL LOSS OF YOUR INVESTMENT.**

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**NEITHER THE UNITS NOR THE OFFERING OF THE UNITS HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR UNDER ANY STATE OR OTHER SECURITIES LAW, AND NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE OR OTHER REGULATORY AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM OR APPROVED OR ENDORSED THE TERMS OR MERITS OF THE UNITS OR THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

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The Company has retained Placement Agent to act as its exclusive placement agent in connection with the offering of the units. Please direct all inquiries regarding the Company, Operating Company and the offering of the units to:

**Placement Agent Inc.**

**December 2005**

## TABLE OF CONTENTS

NOTICE TO PROSPECTIVE INVESTORS .....	
NOTICE TO U.K. INVESTORS .....	
SECURITIES LAWS AND RESTRICTIONS .....	
CONFIDENTIALITY AND RECIPIENT'S UNDERTAKINGS .....	
NOTE ON FORWARD-LOOKING STATEMENTS .....	
PLACEMENT AGENT .....	
OFFERING MEMORANDUM SUMMARY .....	
SELECTED FINANCIAL DATA .....	
SUMMARY OF THE UNIT OFFERING .....	
RISK FACTORS .....	
USE OF PROCEEDS .....	
CAPITALIZATION .....	
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS .....	
BUSINESS .....	
SUMMARY OF FINANCIAL PROJECTIONS AND ASSUMPTIONS .....	
FORMATION TRANSACTIONS .....	
MANAGEMENT .....	
BENEFICIAL OWNERSHIP OF THE COMPANY AND OPERATING COMPANY .....	
CERTAIN RELATED TRANSACTIONS .....	
DESCRIPTION OF INDEBTEDNESS .....	
DESCRIPTION OF THE UNITS .....	
DESCRIPTION OF THE OPERATING COMPANY PREFERRED MEMBERSHIP UNITS .....	
MATERIAL FEDERAL INCOME TAX CONSIDERATIONS .....	
INVESTOR SUITABILITY STANDARDS .....	
PLAN OF OFFERING .....	
LEGAL MATTERS .....	
INDEPENDENT AUDITORS .....	
A VAILABLE INFORMATION .....	
EXHIBIT A — AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED DECEMBER 31, 2004 AND 2003 .....	
EXHIBIT B — FORM OF SUBSCRIPTION AGREEMENT .....	

## NOTICE TO PROSPECTIVE INVESTORS

This Memorandum is being furnished solely for the purpose of enabling prospective investors to determine whether they wish to proceed with further investigation of the Company, Operating Company and making an investment in the units. This Memorandum is not intended to form the basis of any investment decision and does not attempt to present all the information that prospective investors may require for purposes of making an investment decision. The Company anticipates providing prospective investors with the opportunity to ask questions, receive answers, obtain additional information and complete their own due diligence review concerning the Company, Operating Company and the offering of the units prior to entering into any agreement to purchase units. By accepting delivery of this Memorandum, you agree to undertake and rely on your own independent investigation and analysis and consult with your own attorneys, accountants and other professional advisors regarding the Company, Operating Company and the merits and risks of an investment in the units, including all related legal, investment, tax and other matters.

All information included in this Memorandum and otherwise furnished in connection with this offering is submitted to you on a strictly and permanently confidential basis, except as indicated below or otherwise expressly agreed in writing by the Company. Any reproduction or further distribution of this Memorandum or any such information is prohibited. By accepting delivery of this Memorandum, you agree that neither you nor any of your employees, agents or advisors will use this Memorandum or any such information for any purpose other than evaluating the Company, Operating Company and the offering of the units. Except as indicated below or otherwise expressly agreed by the Company, you also agree not to disclose to any person the fact that you have received this Memorandum or any such information or any terms, conditions or other information with respect to the Company or Operating Company. If you decide not to participate in this offering, or if the Company, Operating Company or the placement agent so requests, you agree to promptly return this Memorandum and all other materials received in connection therewith without retaining any copies thereof.

Neither the Company, Operating Company, the placement agent nor any of their respective affiliates shall have any liability for any information included in this Memorandum or otherwise made available in connection with this offering, except for liabilities expressly assumed by the Company in the definitive subscription agreement, the form of which is attached as *Exhibit B* to this Memorandum, and related documentation for each purchase of units. Without limitation of the foregoing, the placement agent makes no representation or warranty as to the accuracy or completeness of any information included in this Memorandum or any other information, written or oral, or any document made available in connection with this offering.

Until the execution of definitive purchase documentation for the purchase of the units, the Company reserves the right, in its sole discretion and for any reason, to modify or amend the terms of the units, to approve or disapprove any prospective investor, to accept or reject, in whole or in part, any subscription, to allot to any investor fewer units than the number sought by such investor and to withdraw from any further discussions, negotiations or transactions. Neither the Company, Operating Company, the placement agent nor any of their respective affiliates will have any liability or obligation whatsoever to any prospective investor in the event of any of the foregoing.

This Memorandum speaks as of the date hereof. Neither the delivery of this Memorandum nor any eventual sale of the units shall, under any circumstances, imply that the information contained herein is correct as of any future date or that there has been no change in the Company's or Operating Company's affairs after the date hereof. Nothing contained herein is, or should be relied upon as, a promise or representation as to future performance. Neither the Company, Operating Company, the placement agent nor any of their affiliates undertake any obligation to update or revise the Memorandum.

This Memorandum is intended solely for the use of the prospective investor to whom this Memorandum is initially provided. This Memorandum does not constitute an offer to sell to or solicitation of an offer to purchase from any investor or in any jurisdiction in which such an offer or solicitation is not authorized or would be unlawful. Each investor must comply with all legal requirements in each jurisdiction in which it purchases, offers or sells the units or possesses this Memorandum, and must obtain any consent, approval or permission required by it in connection with the units or the offering. Neither the Company, Operating Company, the placement agent nor any of their respective affiliates make any representation or warranty regarding, or shall have any responsibility