

**From:** [Walsh, Kathryn E.](#)  
**To:** [REDACTED]  
**Cc:** [Gillis, Diana L.](#); [Jones, Robert L.](#)  
**Subject:** RE: Bankruptcy reorganization - exchange of debt for equity  
**Date:** Thursday, October 20, 2016 1:09:30 PM

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[REDACTED]

We wanted to share some additional input on the email chain below.

A recent inquiry regarding a creditor's forgiveness of target debt in exchange for target equity has identified an unintentional gap in our prior guidance. In the email below from February 19, 2016, we clarified that our advice should not contradict 802.63 or the vulture fund exception. We now see that by only addressing situations where debt was acquired post-bankruptcy, we left open the issue of debt acquired pre-bankruptcy. We are now closing that gap. To remain consistent with 802.63, a creditor may not exclude from the size of transaction its own debt forgiveness in target in exchange for target equity. To hold otherwise would render 802.63 superfluous. We do in fact see filings in these scenarios, which we believe is the correct analysis. Certainly these creditors may rely on 802.63 or other exemptions, if satisfied.

We of course do not fault any reliance on the prior advice, but going forward we want to be clear that creditors cannot exclude from the size of transaction their own debt in target.

Best,  
Kate

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**From:** Walsh, Kathryn E.  
**Sent:** Friday, February 19, 2016 10:50 AM  
**To:** [REDACTED]  
**Cc:** Gillis, Diana L.; Jones, Robert L.  
**Subject:** RE: Bankruptcy reorganization - exchange of debt for equity

[REDACTED], as a result of our internal discussions, we have come to the conclusion that our advice on this topic should not contradict 802.63 or the vulture fund exception. Thus, for purposes of calculating the size of transaction in this context, our revised take is that you must include debt that is acquired post-bankruptcy announcement and that will be cancelled/forgiven in exchange for equity in target. This is consistent with 802.63, as well as the vulture fund exception.

Thanks,

Kate

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**From:** [REDACTED]  
**Sent:** Thursday, February 11, 2016 12:23 PM  
**To:** Walsh, Kathryn E.; Jones, Robert L.  
**Cc:** Gillis, Diana L.  
**Subject:** RE: Bankruptcy reorganization - exchange of debt for equity

Kate/Bob:

I was told that, like cash, debt is not included as consideration in the exchange of a company's debt for equity and that, assuming that no other form of consideration is being paid, the acquisition price is zero and determined. Thus, when creditors receive shares of newly formed company whose shares are not publicly traded in exchange for the debtors' debt, an HSR filing is not required.

Further I understand that this position also applies to the exchange of debt acquired after the target announces that it is filing for bankruptcy. Thus, although debt acquired after a company announces that it is filing for bankruptcy does not qualify for the Section 802.63 creditor exemption when exchanged for equity of the bankrupt company (per the vulture exception), the exchange of debt for equity does not require an HSR filing.

Diana said that the PNO was going to discuss this question further. Has that discussion been completed?

Thank you for your help and guidance.

