

7A(c)(2)  
802.4

From: [Redacted]  
To: FTC.SERIOUS("mveme@ftc.gov")  
Date: Wed, May 17, 2000 12:02 PM  
Subject: Rule 802.4 - Further Discussion

Mike,

Further to our conversation yesterday:

The acquired firm, in an acquisition of voting securities, is an investment fund. According to its prospectus: "The Fund's investment policies permit investment in the following asset classes: (i) senior and subordinated corporate loans, both secured and unsecured ("Corporate Loans") ... (ii) publicly offered and privately placed high-yield debt securities, senior and subordinated, both secured and unsecured (commonly known as "high yield securities" or "junk bonds"); and (iii) convertible debt instruments and preferred stock, each of which may be convertible into common stock or other securities of the same or different issuer, and non-convertible preferred stock." - NO

My question is which of these "asset classes" are exempt and which are non-exempt within the meaning of Rule 802.4 and which are not assets at all by virtue of being voting securities of another issuer. With respect to the voting securities of another issuer, I understand from our discussion yesterday that voting securities of another issuer are considered neither assets nor voting securities of the firm being acquired but must be considered in analyzing whether a secondary acquisition of voting securities is being made.

1) Are the Corporate Loans, as described in the prospectus, "bonds, mortgages, deeds of trust, or other obligations which are not voting securities" within the meaning of Section 7A(c)(2) of the Act? - NO

2) I assume we may consider the Junk Bonds described in the prospectus to be "bonds" within the meaning of Section 7A(c)(2). - YES

3) How are each of the three subclasses of "asset" (iii) to be treated, (i.e., (1) convertible debt instruments, (2) convertible preferred stock, and (3) non-convertible preferred stock)?

In addition, could you please cite me to the Rule that says that voting securities of another issuer held by an acquired firm is not an asset as to the acquired firm.

Thank you.

[Redacted signature block]

THERE IS NO SUCH RULE. I ADVISED THE WAITER THAT IN THE CONTEXT OF 802.4, MINORITY VOTING STOCK HOLDINGS ARE NOT CONSIDERED IN DETERMINING WHETHER THE ISSUER HAS NON-EXEMPT ASSETS IN EXCESS OF \$15 MM. RATHER THEY ARE ANALYZED SEPARATELY AS SECONDARY ACQUISITIONS.

Michael Veme  
5/17/00