

802.63

From: [Redacted]  
To: mverne@rc.gov <mverne@rc.gov>  
Date: 2/21/02 11:50AM  
Subject: HSR advice - 802.63

Hi Mike - Hope you are well. I am hoping for confirmation that the following transaction is exempt under 802.63

Company A is a vulture fund. It acquired 2/3 of the bonds of Company B, pre bankruptcy. Pursuant to a term sheet and a contemplated plan of reorganization, A has agreed to convert its bonds to equity and provide DIP financing during the bankruptcy period ( which would later convert into equity). At the end of the reorganization process, A will own a majority of B. Please assume that the size of parties and size of transaction tests are met.

Thank you.

[Redacted]

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[Redacted]

CC: [Redacted]

ADVISED THAT THIS IS NOT EXEMPT UNDER 802.63.  
802.63 REQUIRES THAT THE DEBT WORKOUT BE IN

THE CONTEXT OF A BONA FIDE CREDIT TRANSACTION.

get [Redacted] <sup>SPB</sup> DEFINES SUCH A TRANSACTION AS ONE IN WHICH "THE PRIMARY MOTIVATION IS EXTENDING CREDIT TO THE DEBTOR" (43 FR. 33501). THIS DOES NOT APPEAR TO BE CONSISTENT WITH A VULTURE FUND WHICH ACQUIRES DEBT WITH NO GENUINE EXPECTATION OF REPAYMENT.

N. OVUKA CONCURS.

B. Michael Verne  
2/21/02