

802-9

Verne, B. Michael

From: [REDACTED]
Sent: Monday, December 17, 2007 11:00 AM
To: Verne, B. Michael
Subject: Passive Investor

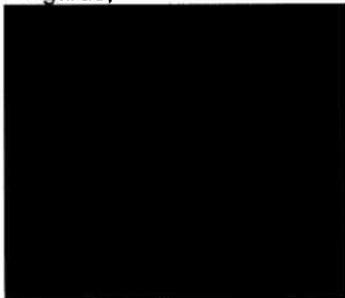
Hi Mike,

I am writing to follow-up on a conversation we had a while ago (September 19th). The transaction was on hold but is now proceeding, hence I am writing to confirm your earlier advice.

Company A and certain of its subsidiaries have initiated cases under Chapter 11 of the Bankruptcy Code. As part of Company A's reorganization, it has entered into an agreement with 6 investors ("Investors 1-6") whereby the Investors have committed to purchase common stock and preferred stock of Company A. The plan of reorganization contemplates that a Search Committee will be appointed for the purpose of selecting directors for the newly reorganized company. The Search Committee will consist of four representatives: (i) one representative of Company A; (ii) one representative of the Unsecured Creditors Committee; (iii) one representative of Investor 1; and (iv) one representative of either Investors 2 or 3. (Investors 4-6 are not represented on the Search Committee.) Investor 1 will choose the representative of either Investor 2 or 3 that will be on the Search Committee. The board of company A will consist of 9 directors. One of the 9 directors (the "Non-Lead Investor Director") will be selected by the representative of Investor 2 or 3 that is chosen to be on the Search Committee. The Search Committee is only participating in the selection of the initial board; not future boards. After expiration of the Non-Lead Director's two year term, that slot will be elected by the shareholders at large of Company A.

My client is Investor 3. Investor 1 will appoint a representative of Investor 2 to the Search Committee. You indicated that none of the foregoing facts would preclude Investor 3 from relying on the passive investor exemption (16 CFR § 802.9). I would be grateful for your conformation.

Regards,



AGREE
BN
12/17/07

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