

802.63

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, May 07, 2008 4:10 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Section 802.63

Mike;

Thanks for taking the time to speak to us this afternoon. The following is to confirm our conversation and your view that the acquisition of equity by the existing bondholders in connection with the debt work-out arrangement that we described qualifies for exemption under Section 802.63 of the HSR Rules as a bona fide debt workout made by a creditor in a bona fide credit transaction in the ordinary course of the creditor's business.

As I explained:

Creditor and existing debtors are in discussions regarding a debt work-out arrangement for creditors' existing debt and to provide additional funding. Several months ago, creditor announced an exchange offer relating to outstanding notes but the offer was not successful. Discussions regarding the current debt work-out arrangement began thereafter. Neither the creditor or debt holders have announced an intention to file for or force a filing for reorganization or bankruptcy. The parties do, however, contemplate that the work-out will be done under the provisions of the Companies' Creditors Arrangement Act of Canada (the "CCAA") or the Canada Business Corporation Act (the "CBCA") and thus executed via a court proceeding.

The debt instruments held by the creditors are bonds which were issued pursuant to an indenture and are by their very nature liquid instruments that are regularly traded in the debt market between qualified institutional buyers.

It is contemplated that the debt work-out will involve an exchange by existing bondholders of existing debt for equity (approximately 85% of the debtor's equity). The 85% equity will be allocated as follows: (i) 58% to all existing bondholders, and (ii) 27% to existing bondholders participating in a \$200 million debt financing designed to secure the liquidity of the debtor and thereby protect the existing bondholders. In addition, certain existing bondholders backstopping the new debt will receive 11% of debtor's equity, (8.5% to the backstop parties and 2.5% to other existing noteholders who agree to buy notes by an early date). All the equity distributed to bondholders, regardless of allocation, will be issued in the context of the overall debt work-out arrangement.

On the basis of these facts you advised that the exchange by the existing bond holders for equity in the context of the debt work-out arrangement as described qualify for exemption under Section 802.63. The exemption extends to equity acquired in exchange for existing debt, additional equity acquired in the exchange by existing bondholders participating in a new debt financing for the debtor and equity acquired by those bondholders serving as backstops for the new financing.

In addition, you again confirmed that Interpretation 225 in the Fourth Edition of the Premerger Notification Practice Manual reflects the PNO's current position regarding the application of Section 802.63 to the exchange of debt for equity in a bankruptcy proceeding, confirming that the exchange by creditors, who acquire debt prior to a public announcement of an intent to file for bankruptcy, qualify for Section 802.63 exemption when the exchange takes place in connection with a bona fide debt work-out or foreclosure. You further confirmed that the test applicable to so-called "Vulture Funds" is based on whether debt is acquired pre- or post announcement of an intention to file for bankruptcy and not on the intent of the creditor at the time debt is acquired.

We also discussed the application of Section 801.15(a) to the acquisition of voting securities that qualify for the Section 802.63 exemption. You confirmed that voting securities acquired that qualify for the Section 803.63 exemption are not held for purposes of the determining the aggregate amount of voting securities that a person holds for purposes of the HSR Act.

5/8/2008

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Lastly, you confirmed that the advice provided does not extend to debt holders who acquire debt of the creditor after its intention to file for reorganization or bankruptcy is publicly announced.

Please let me know if the above does accurately reflect our discussion and your views on the issues.

With kind regards,

[Redacted]

AGREE -
Ben
5/7/08

[Redacted]

[Redacted]

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