

802.63

Verne, B. Michael

From: [REDACTED]
Sent: Friday, May 15, 2009 5:02 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: 802.63

Mike,

Thank you for taking the time to speak to [REDACTED] and me yesterday. The following is to confirm that you agree with our analysis that the proposed acquisitions of equity by existing noteholders in connection with a proposed restructuring under Chapter 11 qualifies for exemption under Rule 802.63 as a bona fide debt workout. We wanted to confirm that when you said the transaction is exempt if the shares were acquired out of bankruptcy, you mean as a result of the bankruptcy process as opposed to outside the bankruptcy process.

The relevant facts are as follows:

1. The proposed restructuring will be funded in part with the proceeds of an equity offering for which the issuer has received a back-stop commitment from certain noteholders. Under the equity offering, the issuer will offer to the holders of notes of one of its subsidiaries the right to purchase voting securities to be issued upon the issuer's emergence from bankruptcy, in exchange for a cash payment related to the equity value of the issuer upon emergence of the issuer from bankruptcy.
2. The proposed restructuring also contemplates that upon emergence of the issuer from bankruptcy the noteholders of the same such subsidiary will receive voting securities of the issuer upon cancellation of their notes.

With respect to certain noteholders, the entity acquiring the voting securities in the offering and upon cancellation of the notes, will be part of the same private equity group as the noteholder but will be a different "person" for purposes of the HSR Act and Rules. All private equity funds and investment companies acquiring the equity purchase debt in the ordinary course of business and purchased the debt in this transaction in the ordinary course.

For purposes of this analysis, you can assume that the noteholders acquired their notes before public announcement of the issuer's bankruptcy filing.

Please confirm that you agree that the proposed acquisitions described above are exempt from HSR Act requirements under Rule 802.63.

Best regards,

AGREE
 B
 5/18/09

IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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[REDACTED]

5/18/2009