

802.63

Verne, B. Michael

From: [Redacted]
Sent: Wednesday, February 15, 2012 1:41 PM
To: Verne, B. Michael
Subject: Questions regarding 802.63

Mike, thanks for taking the time to walk through my fact pattern over the phone. I've summarized our discussion below and would appreciate if you could confirm your agreement.

Facts:

- In connection with a bona fide debt workout, the following steps will take place:

(1) Certain creditors holding Senior Secured Notes of a Debtor in bankruptcy are forming a Holdco LLC, in which no person will have the right to 50% or more of the profits, or assets upon dissolution. The participating creditors will each contribute Senior Secured Notes to Holdco LLC in exchange for a pro rata share (in accordance with their respective portion of the participating creditors' pre-announcement debt) of Holdco LLC's equity and Senior Convertible Notes of Holdco LLC. Holdco LLC will in turn contribute the Senior Secured Notes to a newly-formed Opco LLC (to be wholly-owned by Holdco LLC).

(2) Opco LLC will acquire, in a transaction covered by Section 363(b) of the Bankruptcy Code, substantially all of the assets of Debtor and its subsidiaries and assume certain liabilities of Debtor and its subsidiaries, in exchange for (i) the extinguishment of the Senior Secured Notes, and (ii) an additional cash payment of \$X million.

(3) Certain of the equityholders of Holdco LLC will also provide new term loans to Opco LLC, for which they will receive New Opco Notes.

- All of the equityholders of Holdco LLC were creditors of Debtor prior to the bankruptcy announcement, in bona fide credit transactions entered into in the ordinary course of business.

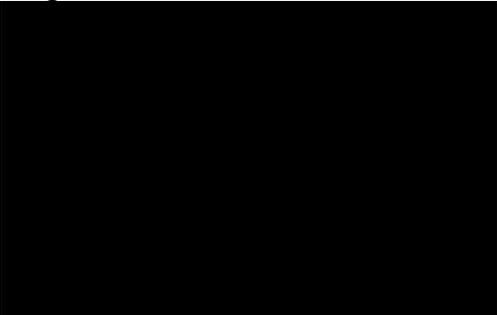
- The value of the cash payment to Debtor of \$X million plus the value of the assumed liabilities may exceed \$68.2 million at closing, and the transaction will close on or after February 27, 2012.

Analysis:

You have advised us that, under the foregoing scenario, no HSR filing is required on the basis that all of the consideration set forth in Step (2) is exempt under 802.63 as part of the overall debt workout. [Step 1 is a non-reportable formation, as no person is acquiring control of Holdco LLC. Step 3 should not be subject to the HSR Act, regardless, but I've mentioned it for the sake of completeness.] Therefore, no valuations need to be made with respect to the additional cash payment, the assumed liabilities, or the fair market value of the purchased assets for purposes of determining whether the size-of-transaction test is met.

Please let me know if there are any other facts that may be useful in your assessment.

Regards,



AGREE -
[Signature]
2/16/12
