

Verne, B. Michael

7A(C)(1)  
NOT-802.1

**From:** [REDACTED]  
**Sent:** Monday, April 07, 2014 4:06 PM  
**To:** Verne, B. Michael; Walsh, Kathryn  
**Cc:** [REDACTED]  
**Subject:** Question Re: 802.1

Mike and Kate,

Hope all is well. We have a scenario where we think 802.1 may apply, but as always, would appreciate your guidance.

Company A is acquiring a portfolio of commodity trading contracts and related inventory from Company B. Both Company A and Company B are currently engaged in physical commodities trading, and the transaction does not involve the acquisition of an operating unit or employees. Company B is not exiting physical commodities trading with this transaction. However, this transaction will cause Company B to exit trading of the specific physical commodity involved, and Company B plans – over time – to exit most but not all of its physical commodities trading altogether. It will continue to trade certain commodity derivatives.

We believe that because the transaction (1) simply involves a portfolio of contracts and related inventory and (2) does not involve an operating unit, and because both parties will still be in the business of commodities trading, that 802.1 would apply here and the transaction would be exempt. I recall some prior guidance that although the seller may have been exiting a particular kind of trading, because they were not exiting all trading, 802.1 still applied. Please let us know if this is consistent with the PNO's position on 802.1.

Many thanks,

[REDACTED]

[REDACTED]

[REDACTED]

[Biography](#) | [Website](#) | [vCard](#) | [E-mail](#) | [Twitter](#) | [LinkedIn](#) | [Blog](#)

\*\*\*\*\*  
IRS Circular 230 Disclosure: To comply with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein (including any attachments), unless specifically stated otherwise, is not intended or written to be used, and cannot be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.

This message is a PRIVILEGED AND CONFIDENTIAL communication. This message and all attachments are a private communication sent by a law firm and may be confidential or protected by privilege. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of the information contained in or attached to this

Although we are comfortable with exiting one type of business, but remaining in another related line, in the context of financial instruments like loans and leases, we are not with other types of activities. We recently nixed the use of 7A(c)(1) for a company that was selling all of its contracts to supply natural gas, but was retaining its contracts to supply electricity in the same geographical area. We think your transaction is more similar to the latter, so the exemption would not be available.

BW  
4/8/14

KW - CONCURS