

Gillis, Diana L.

Subject: FW: 802.63

From: Gillis, Diana L.

Sent: Monday, October 24, 2016 2:21 PM

To: [REDACTED]

Cc: Walsh, Kathryn E.; Shaffer, Kristin; Carson, Timothy; Storm, Evan; Berg, Karen E.

Subject: RE: 802.63

802.63 can only apply to debt held by the acquiring person.

From: [REDACTED]

Sent: Monday, October 24, 2016 9:05 AM

To: Shaffer, Kristin; Walsh, Kathryn E.; Berg, Karen E.

Cc: [REDACTED]

Subject: 802.63

Kate, Karen and Kristin:

Forgive us for writing all three of you this morning. We are under some pressure to get this resolved today if at all possible. Thanks in advance.

Our question relates to the application of Rule 802.63. The facts as set forth below are straight forward, but there is one aspect that we wanted to run by you out of an abundance of caution.

A. Facts

1. Acquiring Person is second lien lender, holding debt of the Acquired Person acquired pre-bankruptcy;
2. Acquired Person is in bankruptcy and will be exiting the business it is in;
3. Deal is structured as an asset acquisition pursuant to 363 of bankruptcy code;
4. Pursuant to the workout, the Acquiring Person will a) credit bid a portion of its second lien debt holdings; b) continue to hold other second lien debt; and c) assume or pay off above \$78.2 MM of first lien debt which the Acquiring Person does not hold.

B. Question

We'd like to confirm that under Rule 802.63, an Acquiring Person who, in addition to acquiring the debtor's assets, is assuming debt (i.e. the first lien) it did not hold pre-bankruptcy would still fall within the exemption. In other words, we would not be required to include the value of the first lien debt being assumed or paid off by the Acquiring Person to determine the Acquisition Price. If that is the case, no HSR Act filing would be required because the size of transaction test would not be satisfied.

Thanks very much for looking at this.

[REDACTED]

[REDACTED]