

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, July 22, 2004 4:23 PM
To: Verne, B. Michael
Cc: Peay, Sandra M.
Subject: HSR question

Michael:

I have a couple of questions relating to Section 802.63 of the HSR Regulations.

The situation involves a bond fund that purchased certain debt securities of an issuer in the secondary market. After the issuer made an announcement that implied a bankruptcy was imminent, the bond fund purchased additional debt securities of that issuer. The issuer ultimately went into bankruptcy and a plan of reorganization was approved whereby those debt securities will be exchanged for voting securities of the issuer. Since all claims have not been finalized, no creditor knows exactly how many shares it will receive. It is possible that this bond fund will receive in excess of \$50,000,000 in voting securities, but it is equally possible that it will not.

1. Will the bond fund, by virtue of purchasing the debt securities on the open market, and thus becoming a creditor at such time, be able to avail itself of the 802.63 exemption? **YES**
2. Are debt securities purchased after the announcement of the proposed restructuring not included in the exemption of 802.63? **NOT INCLUDED**
3. Assuming debt securities purchased after the announcement are not exempt, would those purchased before the announcement be aggregated with those purchased after? For example, if those purchased after the announcement will only be exchanged for \$40,000,000 of voting securities, but together with those purchased before the announcement, the aggregate will exceed \$50,000,000, is a filing required? **NO AGGREGATION**
4. Assuming a filing is required, at what point would a filing be required or advisable? Immediately, just in case it tops \$50,000,000? Or, once there is more certainty? **UP TO YOU.**

If you could let me know your thoughts on this it would be much appreciated. If you'd rather not respond by e-mail, you can call me at [REDACTED]. Thank you for your attention to this matter.

[REDACTED]

B. Michael
8/1/04