

801.21
802.63

Verne, B. Michael

From: [REDACTED]
Sent: Friday, April 15, 2005 1:41 PM
To: Verne, B. Michael
Subject: Sale of rights to a royalty stream

Michael,

Following up on our discussion earlier this week, [REDACTED] wanted me to check with you regarding an two additional wrinkles.

Given the transaction discussed below (assuming size of person and/or size of transaction thresholds are met), where a party purchases a right to a percentage of royalties, is there any potential reporting requirement triggered if the purchasing party also takes a security interest in the underlying IP? In other words, if a Buyer pays consideration in exchange for (1) a security interest in IP, and (2) rights to royalties paid for that IP, is there a potential reporting requirement premised on the acquisition of the security interest?

Our understanding is that the rules would not capture the acquisition of the security interest because the Seller would retain beneficial ownership of the IP, unless and until the Seller defaulted on paying forward the appropriate share of royalties to the Buyer.

As a secondary matter, (again assuming size of person and/or size of transaction thresholds are met) in the event the Seller does default, and the Buyer exercises the rights in the security interest to obtain the IP, would that subsequent acquisition constitute a reportable acquisition of assets? Section 802.63 suggests that the acquisition would be exempt. However, in this scenario, the Buyer is not a bank, but is a private investment organization. Would this acquisition meet the requirement of being a "creditor in a bona fide credit transaction entered into in the ordinary course of business?" Do you need to know more about the Buyer's activities to answer this questions? Please let me know.

Our primary concern is with the issue of acquiring the security interest, but it would be nice to know if the buyer in this transaction would be subject to reporting requirements in the event of a subsequent default.

Thanks again for your time and help this week.

[REDACTED]

[REDACTED]

AGREE THAT THE ACQUISITION
OF THE SECURITY INTEREST IS
NON-REPORTABLE. IN THE
EVENT OF DEFAULT 802.63
WOULD NOT BE AVAILABLE
BECAUSE THIS IS NOT A
CREDIT TRANSACTION.

Blucher
4/15/05