

Verne, B. Michael

From: [REDACTED]
Sent: Friday, January 13, 2006 3:39 PM
To: Verne, B. Michael
Subject: Section 802.63 follow up

Mike, in follow up to our discussion earlier today I wanted to confirm that you agree with the conclusion that the 802.63 exemption would be applicable to X's conversion of its bonds in the following fact scenario.

X is a private investment fund that manages \$20B in bank loans that are primarily non-defaulting loans. Y is a privately held company and the majority of its equity is held by a private investment fund, Z. Back in 2001, Y had financial difficulties but was turned around or infused with cash by Z. Beginning in September 2004, X began acquiring nonconvertible subordinated debt securities ("bonds") issued by Y in open market purchases. At the time of purchasing the bonds X had no intention to buy bonds that would ultimately be converted to voting securities but rather the price was good and had hopes that the prices would increase. In addition to outstanding bonds, Y also has a senior secured credit facility. In June 2005, Y modified its senior credit facility terms and has continued to modify it by amendments over the last six months. In its Q1 10-Q filing (filed June 30) discussed that it may not be able to comply with financial covenants by 9/30/05. Subsequently Y entered into amendments relating thereto. X made purchases of the bonds at various times but acquiring the majority of its position prior to June 28, 2005 making additional small purchases of bonds through mid-November 2005 and now holds approximately 2/3 of the bonds (total issue \$149M). Y was exploring liquidity options via asset sale or sale of the company in the fall of 2005. In mid-September 2005, X first learned that Z was unlikely to provide cash for a turnaround. Then in October/November 2005, Y and the bondholders began discussions about a restructuring that would include a conversion of the bonds (\$100M face amount) into 96% of the equity. In its Q3 10-Q filed November 14, 2005, Y stated that it had liquidity problems and may no longer be a going concern but no indication that it was considering bankruptcy. To date, there have been continued amendments to the senior credit facility and ongoing restructuring discussions with the bond holders and no discussion about a bankruptcy. Upon conversion of its bonds to equity, X will hold in excess of 60% of the company's voting securities valued in excess of the \$56.1 million threshold.

Many thanks,



AGREE -
B. Michael
1/13/06

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