

Verne, B. Michael

802.63

From: [REDACTED]  
Sent: Tuesday, January 16, 2007 3:14 PM  
To: Verne, B. Michael  
Cc: [REDACTED]  
Subject: follow up on 802.63

Mike,

In follow up to our telephone discussion today where you agreed that the exemption in Section 802.63 of the Rules would apply based on our analysis as outlined below, I would appreciate your confirmation via return email.

We represent an SEC-registered investment adviser ("Purchaser") that specializes in alternative fixed income investment strategies. These strategies include purchasing par loans, high-yield bonds and distressed debt. Purchaser currently holds approximately \$253 million face amount of subordinated debt securities ("Notes") in an OTC-listed Company. We believe that a contemplated conversion of the Notes to voting securities in a negotiated exchange agreement between the Company and all Noteholders, including Purchaser, would be exempt pursuant to the creditor exemption in Section 802.63 of the rules.

In January 2005, Purchaser, along with certain of its affiliates, began acquiring non-voting subordinated debt securities in the Company on the open market. Purchaser's last debt purchase was on September 21, 2006. Between January 2005 and September 21, 2006, the possibility of the Company restructuring its capital structure, including the possibility of equitization of the Notes, was raised by the Company but no action was ever taken or agreed to. Various public sources, such as sell-side analyst reports and periodicals, discussed the potential for a restructure. During the same period, Purchaser challenged the Company's prior dividend payment to its parent and sought to have the money returned to the Company. To some extent because of this issue, the Company cited possible financial difficulties at the parent company level in its public filings, although bankruptcy was never identified as a possibility until the March 16, 2006 10-K filing. When the dividend was reversed, the Company had enough liquidity for another year of operations, as stated in its May 10, 2006 8-K filing. Based on these public disclosures, Purchaser made its purchases with a real expectation of repayment on its debt.

The debt-to-equity conversion that prompts this inquiry developed as follows. Subsequent to Purchaser's last trade (but still in September), the Company presented a non-binding proposal to the Purchaser and a small number of other Noteholders regarding a debt to equity exchange. The Company's 10-Q for the period ending September 30, 2006 (filed Nov. 9, 2006) disclosed the existence of these discussions. The Company and the Noteholders agreed to a non-binding proposal outlining the exchange in November 2006. In the event a definitive agreement is reached, Purchaser would convert its \$253 million face amount of Notes into approximately 30% of the outstanding voting securities of the Company.

Thank you for your time.

Agree  
[Signature]  
1/16/07

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice in this communication (including attachments) is not intended or written by Haynes and Boone LLP to be used, and cannot be used, for the purpose of (i)