

Verne, B. Michael

802.63

From: [REDACTED]  
Sent: Wednesday, May 28, 2008 3:59 PM  
To: Verne, B. Michael  
Subject: 802.63 question

Mike:

We represent a company that is a bona fide creditor of company in financial distress. Our client and the other principal creditors are negotiating a debt work arrangement. The arrangement will be effected pursuant to the Companies' Creditors Arrangement Act of Canada (the "CCAA". Debtor has not yet publicly announced its intention to file under the CCAA. In connection with the debt workout, the creditors will assign their interests to a Newco in exchange for voting securities/equity interests of Newco. The assignment will take place after the debtor-company publicly announces its filing under the CCAA. Newco will exchange the debt it holds for the assets of the debtor company.

The question is whether the exemption set out in Section 802.63 applies because the creditors assign their rights to a new company after the debtor publicly announces its intention to file under the CCAA. We believe that the exemption should apply assuming that only the preannouncement creditors hold equity of Newco because Newco is simply the vehicle that will used be used to accomplish the bona-fide debt workout with the debtor's existing creditors. Newco is not a vulture fund attempting to acquire assets or control of a company after it has publicly announced its intention to file for bankruptcy. We believe that in contrast to a vulture fund, Newco can be viewed as a creditor in a bona-fide credit transaction because it is simply the vehicle through a bona-fide debt workout is effected.

Please call me at your convenience to discuss.

Best regards,

[REDACTED]

AGREE  
BM  
5/29/08

[REDACTED]

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5/29/2008

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