[redacted]

802.63

[redacted]

July 1, 2008

[redacted]

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Application of the Section 802.63 Creditor Exemption

Dear Mike:

Thanks for participating in the conference call last week with me and [redacted] The following is to confirm our conversation regarding the application of the Section 802.63 exemption to the transaction that we discussed and your agreement that the exemption applies.

As you may recall, the issue we discussed concerned the application of the exemption to a creditor who acquired a participation interest in a Senior Secured Debt Facility ("SSDF") of a debtor as well as the right to acquire the remaining participation interests in the SSDF prior to the debtor publicly announcing its intention to file a petition under the Companies Creditors Arrangement Act of Canada ("CCAA"). The assets of the creditor will be acquired pursuant to an Asset Purchase Agreement entered into in a bona fide debt workout agreement between the debtor and [redacted], the lenders' agent. Based on the facts presented, you agreed that the acquisition qualifies for the Section 802.63 exemption. Although we spoke on a no-names basis, for clarification and ease of discussion, the following identifies the parties involved in this transaction and sets forth in detail the facts that we believe support the conclusion that the exemption applies.

[redacted]

[redacted]

Background

The transaction involves the acquisition of the assets of [redacted] pursuant to an Asset Purchase Agreement that has been entered into in connection with a bona fide debt workout. As explained in more detail below, the debt

workout arrangement was negotiated with the original lenders and successor creditors under a SSDF that was entered into as of January 9, 2007, and subsequent amendments to the agreement. As discussed further below, the SSDF incorporates both direct lenders and lenders by way of participation interest. Participants and direct lenders are sometimes collectively referred to as "lenders" in this letter.

[redacted] the debtor, has recently experienced economic difficulties due to the downturn in the housing industry and the increased costs of supply and transportation. At a certain point thereafter, [redacted] met with [redacted], the Agent under the SSDF, to discuss the possibility of a default under the SSDF. In January, [redacted] and the lenders entered into a Forbearance Agreement pursuant to which the lenders agreed not to pursue existing defaults under the SSDF until February 1, 2008, which period could be extended at the option of [redacted] until March 19, 2008. Subsequently, [redacted] exercised such option to extend and the Forbearance Agreement was extended to April 1, 2008 and later to June 12, 2008.

To further address its financial difficulties, [redacted] sought the assistance of a private consultant to solicit preliminary proposals to refinance the SSDF. The effort was unsuccessful. [redacted] also engaged in an effort to raise capital by selling its Spa Business. An agreement for the sale was entered into in May 2008. Lastly, [redacted] engaged an outside consultant to solicit prospective purchasers for [redacted] remaining assets. None of the offers received were of sufficient value and, on May 8, 2008, [redacted] indicated that it would not support a transaction that would fall short of enabling [redacted] to repay in full its obligations to the lenders under the SSDF.

Subsequently, after a period of negotiation, [redacted] and [redacted] and certain of its subsidiaries, entered into an Asset Purchase Agreement, dated as of June 11, 2008, pursuant to which [redacted] or its assignee, will acquire certain assets of [redacted] The purchase price for the assets is the amount owed by [redacted] to the lenders pursuant to the SSDF (approximately C$271 million) including a DIP credit facility (approximately C$30 million) and the assumption of certain liabilities of [redacted] arising under existing contracts (real property leases, collective agreements), trade debt, product warranties, and obligations to employees.

On June 12, 2008, [redacted] announced publicly that it reached an agreement with [redacted] to sell its assets and filed a petition under the CCAA with the Superior Court, Province of Quebec. The assets that are to be sold are located in both Canada and the

[redacted]

U.S. As of the date of this letter, [redacted] has not filed a petition with the bankruptcy court in the U.S.

Background regarding the Senior Secured Debt Facility and the Current Holders of the Debt

The original lender under the SSDF with [redacted] was [redacted]. On March 9, 2007, [redacted] became participants in the loan. They held debt of [redacted] or participation interests therein of approximately C$115 million, C$60 million and US$ 50 million, respectively. In connection with the SSDF, [redacted] entered into an Inter-creditor Agreement whereby the junior participation interest holders (at this time [redacted]) were granted the right to acquire the participation and direct lender interests of [redacted] (the senior participation interest holders) (hereinafter the "Inter-creditor Agreement").

In September 2007, Sun Life acquired an additional junior participation interest from [redacted] of C$50 million and entered into a put/call arrangement with [redacted] (collectively, [redacted]) whereby this junior participation interest of Sun Life could be put to [redacted] or called by [redacted] from [redacted] [redacted] is an affiliate of [redacted] [redacted] holds approximately 89% of the economic interest in the arrangement.

On May 1, 2008, Tricap acquired from [redacted] its junior participation interest in the debt of [redacted] As a junior participant under the Inter-creditor Agreement, [redacted] also received the right to acquire the senior participation interests of [redacted] and [redacted] and the direct loan interests of [redacted] [redacted] holds approximately 89% of this participation interest in the debt and the rights under the Inter-creditor Agreement.

In connection with the negotiations of the Asset Purchase Agreement, [redacted] through its participation interests, agreed to extend to [redacted] DIP credit financing of about $30 million to enable [redacted] to continue its operations during the pendency of the CCAA proceeding.

Structure of the Transaction

The assets of [redacted] will be acquired, pursuant to the Asset Purchase Agreement, by a newly formed entity ("Newco") that will be controlled by [redacted] will hold approximately 89% of Newco's voting securities and the remaining shares will be held by two other [redacted] partnerships. Newco will hold the participation interests in the debt of [redacted] acquired by [redacted] prior to [redacted] public announcement of its intention to file under the CCAA.

[redacted]

At or just prior to the closing, Tricap will acquire the participation interests in the debt held by [redacted] and [redacted] pursuant to the Inter-creditor Agreement and the put/call arrangement with [redacted] and will also acquire the direct lender interests of [redacted] pursuant to the Inter-creditor Agreement. After these acquisitions, [redacted] will hold 100% of the beneficial interests in the SSDF either as a participant or as a direct lender. [redacted] will then assign its nominal rights as a direct lender to [redacted] so that [redacted] becomes the full legal and beneficial holder of all loans under the SSDF. This debt will then be contributed to Newco.

At the closing, Newco will hold all of the outstanding debt of [redacted] under the SSDF including the DIP facility and this debt will be the consideration paid for the assets of [redacted] As stated above, the purchase price for the assets is the amount owed by [redacted] to the lenders pursuant to the SSDF (approximately C$271 million) plus a DIP facility (approximately C$30 million) and the assumption of certain liabilities of [redacted] arising under existing contracts, trade debt, product warranties, and obligations to employees.

HSR Analysis

Based on these facts, it appears that under existing interpretations, [redacted] acquisition of [redacted] assets is exempt from the HSR Act requirements under Section 802.63 of the HSR Rules. This conclusion is based on the fact that [redacted] is acquiring the assets of [redacted] as a creditor in a bona fide debt credit transaction. [redacted] is a bona fide creditor because it (and [redacted] acquired and obtained the rights to acquire all of the participation interests in the SSDF of [redacted] prior to the public announcement by [redacted] of its intention to file a CCAA petition. Moreover, the acquisition is a bona fide credit transaction because it will occur in connection with a bona fide debt workout arrangement between [redacted] and [redacted] agent for the lenders. This is further supported by the fact that the consideration for [redacted] assets is the amount of the outstanding debt under the SSDF which will effectively be exchanged for assets of [redacted] to make the creditors whole and satisfy [redacted] credit obligations.

Please let me know at your earliest convenience, if you still agree with this conclusion.

Sincerely yours,

[redacted]

[redacted]

AGREE
B
7/2/08