801.10

Verne, B. Michael

From: [redacted]
Sent: Wednesday, January 07, 2009 3:26 PM
To: Verne, B. Michael
Cc: [redacted]
Subject: Our calls of 12/31/08 and 01/07/09

Dear Mike,

This email is to confirm the telephone conversation [redacted] and I had with you on December 31, 2008 and our subsequent conversation on January 7, 2009. The companies involved in the transaction we discussed are [redacted] and [redacted]. [redacted] intends to acquire [redacted] through a Chapter 11 bankruptcy process, in which [redacted] would issue new [redacted] stock to [redacted] and existing [redacted] stock would be cancelled for no consideration. [redacted] holds [redacted] first lien debt which it purchased in June and July 2008. [redacted] had not publicly disclosed any consideration of filing for bankruptcy at that time. The first public mention of a potential Chapter 11 financial restructuring was by counsel for [redacted] in Federal Court on September 26, 2008.

In the transaction as currently contemplated, [redacted], in a bona fide debt workout arrangement, will exchange the debt it holds for a portion of the newly issued voting securities of [redacted]. Based on prior informal interpretations, we believe that this acquisition is exempt under Section 802.63 of the HSR Rules. It may be that the debt exchange will result in [redacted] holding 50 percent or greater of the [redacted] outstanding voting securities. If that occurs, we believe there is no need to discuss the nature of the consideration for the remaining voting securities because of the exemption set out in Section 7A(c)(3) of the HSR Act and the

intra person rules. However, it is possible [redacted] will not acquire 50 percent of [redacted] newly issued voting securities in exchange for the debt. Thus we believe we may need to consider whether the consideration exchanged for the balance of the [redacted] securities exceeds the $50 million (as adjusted) minimum reporting threshold.

Before addressing that issue, given that the [redacted] voting securities holders will receive no compensation for the extinguishment of their shares and debt holders will receive all consideration to be paid by [redacted] for HSR Act purposes this is a transaction for $0.00. Thus the minimum HSR threshold is not exceeded. (See FTC Informal Interpretation: 0805010) That said, we address the additional consideration question below.

As noted in the attachment, consideration consists of two elements: 1) a cash payment of up to $18.4 million; and 2) contribution of certain AG unsecured notes which are identical to [redacted] unsecured notes which are publicly traded and another type of [redacted] unsecured notes, (so-called mirror notes), the terms of which are identical to the [redacted] unsecured notes which are publicly traded except that they are contractually subordinated to [redacted] secured bank debt. The [redacted] otes that will be issued have a total face value of $54.7 million. However, the publicly traded notes currently trade for less than 80 percent of their face value and the parties have agreed in connection with this transaction that the notes will be valued at 80 percent of face value, or a total of $43.76 million. This $43.76 million value will be used to determine whether a competing offer in the bankruptcy process is superior to the [redacted] offer, and was negotiated in good faith without regard to HSR Act

considerations. The parties believe that the consideration for shares which are not exempted by 16 CFR §802.63 is $62.16 million, below the HSR minimum reporting threshold. It is our understanding that you agree that in determining the acquisition price, it is appropriate to value the [redacted] notes at their current trading value and not at face value. As a result, the acquisition of the additional shares of [redacted] does not meet the HSR size of transaction threshold.

Also we discussed the fact that [redacted] provided [redacted] with a debtor in possession loan ("DIP") in the amount of $10 million for working capital. The DIP loan constitutes bona fide debt of RPG that will be given super-priority lien status pursuant to bankruptcy rules. Indebtedness under the DIP loan agreement matures on May 31, 2009 or earlier in certain circumstances, including the closing of the proposed acquisition. We understand you concur with us that the $10 million DIP loan is not consideration for the shares to be acquired and should not be taken into account in determining whether the HSR size of transaction threshold is exceeded.

Please confirm that you agree with the conclusions set out above.

[redacted]

AGREE
11/8/09

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