

802.63

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February 2, 1993

Richard B. Smith, Esq.  
Premerger Notification Office - Room 303  
Federal Trade Commission  
6th Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

FEB 11 2 21 PM '93  
FEDERAL TRADE COMMISSION

Dear Mr. Smith:

This is to confirm our recent conversation concerning Rule 802.63.

As I understand your advice, you stated that there is a bright line test whereby debt acquired prior to the issuer's going into bankruptcy is deemed to have been acquired in the ordinary course of the creditor's business, while debt acquired subsequent to bankruptcy is not. As a footnote, you suggested that debt acquired within a few hours or perhaps days of bankruptcy, either with actual knowledge of the imminent filing or on the basis of widespread rumors, would likely not be deemed to be in the ordinary course. The rationale for the bright line rule, as you expressed it, is to avoid factual inquiry into the financial health of the issuer in assessing whether the debt was acquired in a bona fide credit transaction entered into in the ordinary course of the creditor's business.

Please let me know if I have not accurately stated your advice.

Sincerely,

[REDACTED]

[REDACTED] 2/4/93 - called [REDACTED] and advised that letter represents the position of the PMN Office so long as the creditor is not a competitor of the issuer whose stock or assets are being taken as part of a debt work. If creditor is also a competitor, 802.63 is not available for the taking of reportable amounts of stock or assets of the debtor. RB Smith