[redacted]

WRITER'S DIRECT LINE [redacted]

January 21, 1994

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

RE: Rule 802.63

This is to confirm our conversation today concerning the applicability of Rule 802.63 to the facts described in this letter. Please let me know if this accurately reflects your advice.

Company A is a long-standing debentureholder of Company B. The proposed plan for a bona fide debt workout contemplates that Company A's debenture will be converted into voting stock representing approximately 15% of the post-workout voting stock of Company B. Also pursuant to the plan, Company A has been requested to contribute "new value" for which it will receive additional

cash, not a loan?

The issue presented is whether the acquisition of voting stock as a consequence of the contribution of "new value" pursuant to the workout is exempt under Rule 802.63. (The acquisition of stock in exchange for the debenture is clearly exempt under 802.63.)

Your advice was that, so long as the "new value" was being contributed by a creditor pursuant to the workout plan, the acquisition of voting securities in exchange for the "new value" [redacted] more than 50% of Company B's outstanding voting securities. This is also true

[redacted]

even if Company A's contribution of "new value" is voluntary in the sense that it is free to refuse to make this contribution and free the economic [redacted]

[redacted]

Thank you for your assistance.

Sincerely,

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1/24/94 Advised writer that voting stock taken back for "new value" contributed by A to B, even though done pursuant to a debt workout plan, does not create a "creditor/debtor" relationship and, thus, the voting stock taken back for such "new value" cannot be exempt under §02.63.

RMSmith