c(11), 802.63
c(1)

[redacted]

December 6, 1989

[redacted]

By Telecopier (202) 326-2050

Lynn Guelzow
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, D.C.

Dear Ms. Guelzow:

I am writing to ask the Commission's advice on the [redacted]

The first exemption is set forth in Section 7A(c)(11) of the [redacted]

[redacted]

Our client, a domestic corporation, is an investor holding title to a number of large pieces of equipment (consisting principally of aircraft and railroad rolling [redacted] assets"). The lease financings through which our client obtained the assets were of the type described in the Commission's Statement of Basis and Purpose ("SBP"), 43 Fed. Reg. at 33502 (1978).

The wholly-owned equipment leasing subsidiary of a large [redacted]

all of the investment assets described above. Bank Subsidiary, Inc. proposes to acquire the assets subject to [redacted]

confirmation that under these facts no pre-merger filing will

be required because the proposed transaction falls within one of the two exemptions noted above.

Section 7A(c)(11)

The statutory exemption contained in Section 7A(c)(11) applies to acquisitions solely for the purpose of investment made by "any bank, banking association, trust company, investment company, or insurance company," as long as the acquisition is, like our proposed transaction, in the ordinary course of the acquiring person's business. We believe that Bank Subsidiary, Inc. should be considered a "bank" within the meaning of the statutory exemption.

Our only hesitation on this subject is caused by Rule 802.64(1), a rule unrelated in content or purpose to Section 7A(c)(11), but which defines bank "within the meaning of 15 [redacted]

"institutional investor." Subsection (12) of Rule 802.64 notwithstanding, if the definition of "bank" in 15 U.S.C. § 80b-2(a)(2) were used to interpret Section 7A(c)(11), Bank [redacted] 7A(c)(11).

We believe that such a narrow reading of the statutory [redacted] as it is standard industry practice for banks acquiring lease financing assets to do so through wholly-owned investment subsidiaries. Furthermore, such an artificial reading of the statutory exemption would be inconsistent with the policy of the Act that requires filings to be made by the ultimate parent entity of the acquiring and acquired persons. It would also disadvantage companies operating through wholly-owned subsidiaries as opposed to those operating through divisions. This preference for one corporate structure over another where the structural difference has no antitrust significance would be inconsistent with the Commission's historic practice.

It should be noted that because the particular assets involved are subject to net leases in which the owner has no control or responsibility for the operation, maintenance or use of the assets, managerial control over the investment [redacted] filings would be required by the Commission for transactions lacking any antitrust significance whatsoever. Accordingly,

while we have concluded that this exemption should apply under our facts, we would appreciate the Commission's

[redacted]

With respect to the second exemption (that which is set forth in Rule 802.63[a]), it is not clear whether the transaction we have described constitutes the "establishment or a lease financing, even though as a result of the transaction Bank Subsidiary, Inc. will simply be [redacted] within the meaning of the rule. The SBP, 43 Fed. Reg. at 33501-33503, does not define which entities come within the class of creditors, nor state whether the list provided in the SBP is meant to be exclusive. Although these are interesting questions, we seek the Commission's views on this second exemption only if you disagree with our conclusion that the proposed transaction with Bank Subsidiary, Inc. [redacted] /A(c)(11).

Since this is a transaction we hope to close by year end, we would appreciate a prompt response confirming our reasoning, as well as any other comments you might have. Thank you for your assistance.

Very truly yours,

[redacted]

TDS/lr

called 12-7
The transaction is not exempt, substantially all of the seller's assets in the ordinary course.

L. Guelzow