c(11)



December 8, 1989

## By Telecopier

Lynn Guelzow (202-326-2050)
Premerger Notification Office
Bureau of Competition

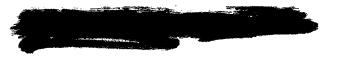
As I mentioned in our telephone conversation yesterday, I thought that it might be helpful for me to explain in a fail that it may letter to you of December 6 should be entitled to the exemption described in Section 7a(c)(11) of the statute ("subsection 11"). For purposes of these further discussions,

transaction under Rule 802.63. The remaining issue, then, is whether the statutory exemption applies.

I believe that our only disagreement lies in whether the proposed transaction is an "ordinary course of business" transaction. I did not understand you to disagree that the transaction described in my earlier letter would be (1) an acquisition solely for the purpose of investment, (2) by a bank (you agreed that an acquisition by a bank's wholly-owned subsidiary would be viewed as a bank acquisition for purposes of subsection 11), (3) of assets in the course of its business. As I understand your position, though, you thought that our claim to the statutory exemption faltered because our client was transferring substantially all of its lease financings, and such a transaction would be, by definition, extraordinary.

Unlike other parts of the statute, subsection 11 specifically evaluates "ordinary" only from the perspective of the buyer (exempting a bank's investment acquisitions made "in the ordinary course of its business"). You suggested that it was never in the ordinary course of a buyer's business to buy all or substantially all of a seller's assets, even where the transaction is otherwise identical to transactions routinely

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## "ordinary" for the seller in order to be "ordinary" for the

to the contrary.

If you can direct me to some authority which you believe upholds your position I will certainly study it. I look

Very truly yours

TDS:dfs

Called 2-12-89
Transaction is not
expensed to back is not
buying for impostment
only when buying all
of the assets of a line
of business from a
competitor
2. Guelzons

John Spple concurs

