

c(11)



December 8, 1989

By Telecopier

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

As I mentioned in our telephone conversation yesterday, I thought that it might be helpful for me to explain in a ~~follow-up letter that I have concluded that the transaction~~ described in my 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, ~~we should not raise the possibility of exempting the~~ 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

NT BY

;12- 8-89 ; 5:20PM ;

"ordinary" for the seller in order to be "ordinary" for the  
~~buyer should significantly exceed the exemption in subsection~~

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 12-12-89  
Transaction is not  
exempt - bank is not  
buying for "investment  
only" when buying all  
of the assets of a line  
of business from a  
competitor -  
Z. Guelzow

John Spole concurs

NT [REDACTED]

:12- 8-88 : 5:21PM ; [REDACTED]

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bcc:

[REDACTED]