

[REDACTED]

[REDACTED]

[REDACTED]

June 8, 1991

Richard B. Smith, Esq.  
Premerger Notification Office  
Room 312, Headquarters Building  
Bureau of Competition  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, N.W.

Re: Applicability of "Ordinary Course of Business"  
Exemption To Sale of Lease and Loan Receivables

Dear Mr. Smith:

pursuant to our telephone conversations of May 28 and

under Section 7A (b)(1) of the Hart-Scott-Rodino Antitrust  
Improvements Act of 1976 (the "Act") to a proposed transaction  
involving two companies engaged in lease and loan financing.  
As we discussed, our firm represents [REDACTED]  
[REDACTED] and its subsidiary, [REDACTED]  
[REDACTED] (collectively, the  
[REDACTED] are engaged in financing and leasing

equipment to the customer.

receivables held by [REDACTED]  
(As you will recall, [REDACTED] recently concluded the  
sale of [REDACTED] portfolio of [REDACTED] loan receivables  
to another financial organization in a non-reportable  
transaction.) The remaining portfolio of [REDACTED] to be sold  
consists of [REDACTED] (75%), [REDACTED]  
(13%) and miscellaneous equipment (12%) (no category of which  
composes 5% or more of the portfolio).

[REDACTED]

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[REDACTED]

paid for the [REDACTED] lease/loan receivables would be approximately \$60 million and the Size of Person Test would be met. We are [REDACTED]

[REDACTED] PURCHASES AND SELLS LEASE/LOAN PORTFOLIOS OF THE TYPE

[REDACTED]

Seller's rights in bona fide lease and loan financing arrangements, together with all of Seller's right, title and interest in the underlying assets. Taking into account the type of equipment financed, these leases/loans are considered to be long term, rather than short term operating leases, in the context of the equipment being leased or financed. The identity of the lessees would not change upon sale of this portfolio. We are further advised that neither [REDACTED] nor any other entity within the proposed acquisition [REDACTED] in competition with providers of [REDACTED] or [REDACTED] (which together account for 88% of the dollar value of [REDACTED] assets financed in the portfolio to be sold, based on the net outstanding amount due; the remaining 12% of the portfolio consists of a wide variety of types of equipment which we have not attempted to analyze or categorize.)

Finally, the proposed acquisition would not result in the acquisition of all or substantially all of the assets of

[REDACTED]

an "entity" as that term is defined in § 801.1 (a) (2) of the Rules implementing the Act. Moreover, the unit is customarily referred to by Sellers as a "group" rather than a "division." We note also that [REDACTED] writes leases and loans on behalf of both [REDACTED]. Further, [REDACTED] will [REDACTED] after the acquisition to engage in the leasing and

Although it is not considered likely unless the company is able to develop a relationship with a manufacturer, [REDACTED] would be willing to lease [REDACTED] or [REDACTED] assuming the economic terms of any proposed leases fit the company's then-existing financial requirements.

[REDACTED]

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Based upon the foregoing facts, it is our understanding that the proposed acquisition is exempt from the premerger reporting requirements of the Act by virtue of the "ordinary course of business" exemption set forth in Section 7A (c)(1) of the Act. If our understanding is incorrect, or should you have additional questions, we would very much appreciate hearing from you within the next three business days. If we have not heard from you within that time, we will assume that the staff of the FTC's Premerger Notification Office concurs in our understanding of the matter.

very much appreciated.

Sincerely yours,

6/10/91 Talked to

Advised that I discussed with J/S, who stated that if acquired person still in lease financing business and no entity, or substantially all of the assets of a division or entity, were being sold, then transaction is exempt under 7A (c)(1) and our view of 802.100 (b).<sup>1</sup> Even if one were to assume that [redacted] computed with the lessee of the

a value of 7.2 MM since we [redacted] bought in the ordinary course of business. RBSmith  
<sup>1</sup> new ABA letter #16 notwithstanding