

7A (c)(1); 802.1(b)

October 28, 1991

VIA TELECOPIER

Richard B. Smith, Esq.

Bureau of Competition  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

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

Dear Mr. Smith:

Pursuant to our telephone conversation of October 24, 1991, we are seeking your advice respecting the applicability of the "ordinary course of business" exemption under Section 7A (c)(1)

and its

is engaged in financing and leasing a variety of commercial and industrial equipment.

Seller is presently contemplating the sale of a portfolio of lease and loan receivables held by Seller's [redacted]. The portfolio to be sold consists of equipment and real estate financing for [redacted] (74.4% of the portfolio, based on net outstanding amounts owed); equipment and real estate financing for a chain of [redacted] stores (13.4%); general equipment financing (including the financing of modular office furniture, [redacted] equipment and [redacted] equipment) (9.3%); and general business and [redacted] financing (including, for example, the financing of [redacted]).

Richard B. Smith, Esq.  
October 28, 1991  
Page 2

office copiers, office computers and general office equipment) (2.9%).

The entity which will acquire the portfolio ("Purchaser") and the Acquiring Person of which it is a part engage in both asset-based lending and commercial leasing. The value of the consideration to be paid for the portfolio will be approximately \$36 million and the Size of Person Test will be met. We are advised that Purchaser frequently and routinely purchases

purchased portfolios comprised of receivables aggregating in excess of \$15 million.

leases comprising the subject portfolio. Purchaser will not, however, acquire ownership of the equipment and other assets which secure payment of the loans and leases. The loan receivables in the

of the underlying assets or collateral. For those transactions, Seller is assigning to Purchaser its security interests in the underlying collateral. The lease receivables in the portfolio arise from true leases in which Seller retains ownership of the

payment of the lease receivables. Purchaser seeks only a lender's

Taking into account the type of equipment financed, the leases in the portfolio are considered to be long-term rather than

upon sale of this portfolio. We are further advised that neither Purchaser nor any other entity within the proposed Acquiring Person

services or sellers of (As indicated above, the foregoing types of lessees and borrowers have executed leases or loans accounting for over 97% of the dollar value of the portfolio to be sold.)

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

or any operating division thereof. Only a small portion of the assets of would be acquired, and, in any event,

Richard B. Smith, Esq.  
October 28, 1991  
Page 3

this unit is not separately incorporated nor is it an "entity" as that term is defined in 5.801-1 (a) (2) of the Rules implementing

series as a group rather than a division. We note also that [redacted] is not exclusively related to any one entity within Seller and

equipment and real estate financing of the type represented in the portfolio to be sold, assuming the economic terms of any such

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, we should have additional

closing of the subject acquisition is presently scheduled for October 31, 1991. If we have not heard from you before that time, we will assume that the staff of the FTC's Premerger Notification Office concurs in our understanding of the applicability of the exemption.

As always, your guidance and assistance is greatly appreciated.

Sincerely yours,

[Redacted signature]

10/29/91 - Advised [redacted] that transaction appeared exempt. While it is possible that buyer may compete in sale of equipment used by lessees which make up 2.9% of transaction, this as a percentage of total deal is the exempt purchase. While it appears that

both accounts are being sold standing alone or in the aggregate, exempt under the facts presented.

equipment will not be transferred, providing another avenue for possible non