

821-10-91031

January 17, 1992

BY FAX

Premerger Notification Office
Bureau of Competition—Room 302

washington, D.C. 20580

Attention: Richard B. Smith, Esquire

Re: [REDACTED]

Gentlemen:

On behalf of our client, [REDACTED]

[REDACTED] I expect very soon to make a Hart-Scott-Rodino filing in connection with the Partnership's acquisition on December 30, 1991 of an undivided 15% interest as tenant in common in the land and buildings constituting [REDACTED]. The [REDACTED] will make

in the [REDACTED]s worth less than \$15,000,000. The purpose of this letter is to

[REDACTED] contemporaneous filing, in connection with the same transaction, as both an Acquiring and Acquired Person and, in its filing, will state that the value of the entire Project is approximately \$129,000,000. The [REDACTED] does not know the

(1) It is a well known and accepted fact in the real estate industry that the value of a minority interest in a real estate investment is always substantially less (by a factor of 25% to 40%) than its proportionate share of the value of the whole. The diminution in value of a minority interest

[REDACTED] the number of potential buyers for the whole project; and, second, the

[REDACTED]

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participate in, or to control, the management of the investment. Finally, even if [REDACTED] estimate that the value of the entire [REDACTED] is \$129 million is correct, the value of the [REDACTED] undivided 15% interest is less than \$15 million, which is the amount of the [REDACTED].

(2) The current assessed value of the [REDACTED] for real estate tax purposes, which according to [REDACTED] is [REDACTED].

[REDACTED] in successfully challenging an initial real estate tax assessment for the [REDACTED] of more than [REDACTED]. Furthermore, in Section 13 of the [REDACTED] the [REDACTED] and [REDACTED] agreed for federal income tax reporting purposes to value the [REDACTED] at its assessed value for real estate tax purposes.

Despite these considerations, [REDACTED] has made a good faith determination that the fair market value of its minority interest in the Project will be less than \$15 million.

described, please call either me or my partner, [REDACTED].

Very truly yours,

[REDACTED]

LL partnership has made a good faith determination under c

acquire in the next 90 days. If the value is less than \$15 MM, then no filing is required.
RBS

§ 211.23

determination of control has been made on the basis of the facts summarized in the communication. In the

of control by the Board, the parties shall within 30 days (or such longer period as may be permitted by the Board):

of its worldwide business is banking; and more than half of its banking business is outside the United

- banking organization shall:
 - (1) Meet at least two of the following requirements:
 - (i) Banking assets held outside the

and net income of companies in which it owns 25 per cent or more of voting shares if all such companies within the organization are included.

net income derived from, activities listed in § 211.5(d) shall be considered banking assets, or revenues or net income derived from the banking

(45 FR 67058, Oct. 9, 1980)

§ 211.23: Nonbanking activities of foreign

tion subject to the following:
(1) "Directly or indirectly" when used in reference to activities or investments of a foreign banking organization means activities or investments of the foreign banking organization or of any subsidiary of the foreign banking organization.

- (i) Banking assets held outside the United States exceed banking assets held in the United States;

- the business of banking in the United States; or
 - (iii) Net income derived from the business of banking outside the United States exceeds net income derived from the business of banking in the United States.

consecutive years as reflected in Annual Reports (FR Y-7) filed

commenced or acquired prior to the first fiscal year for which the Annual Report reflects performance with paragraph (b) of this section. Activities commenced or investments made after that date shall be terminated or divested within 12 months of the filing of the report.

lending company subsidiary in the United States or that controls a bank

organization may be determined on a consolidated or combined basis. Assets, revenues and net income of companies

graph (e) of this section.
(e) Specific determination of eligibility for nonqualifying foreign assets

Subsidiary means any person

determining total assets, revenues, and

exemptions afforded by this section

shall be considered held or derived

shall be considered held or derived

shall be considered held or derived

1-91 Edition)

Federal Reserve System

§ 211.23

is banking, its banking the United y, a foreign

and net income of companies in which owns 25 per cent or more of the voting shares if all such companies within the organization are included; (2) Assets devoted to, or revenues or

banking organization may apply for a specific determination prior to the time it ceases to be eligible for the exemptions afforded by this section. In determining whether eligibility for the exemptions would be consistent with

outside the king assets

n the busi- he United rived from -be stated

consecutive years as reflected in its Annual Reports (FR Y-7) filed with the Board. A foreign banking organization that ceases to be eligible for the exemptions may continue to engage in activities or retain investments com-

ments. A foreign banking organization that qualifies under paragraph (b) of this section may:

- (1) Engage in activities of any kind outside the United States;
- (2) Engage directly in activities in the United States that are incidental

ments made after that date shall be terminated or divested within three

the United States other than those

nues, and

exemptions afforded by this section.

- (5) Own or control voting shares of a

or derived inside the

located or consolidated revenues derived, outside the United States." (12 CFR 225.4(g)(XIII) (1980)).

(ii) The foreign company shall not directly underwrite, sell, or distribute,

that underwrites, sells, or distributes securities in the United States except to the extent permitted bank holding companies;
(iii) if the foreign company is a subsidiary of the foreign banking organization, the foreign company must be, or control an operating company that

that is of the opinion that other activities or investments may, in particular circumstances, meet the conditions for an exemption under section 4(c)(8) of the BHCA may apply to the Board for such a determination by submitting to the Reserve Bank of the district

[45 FR 81540, Dec. 11, 1980, as amended at 47 FR 51095, Nov. 12, 1982; 50 FR 39986 Oct. 1, 1985]

Subpart C—Export Trading Companies

the same foreign company's activities in the United States shall be the same kind of activities or related to the same

(ii) reports. (1) The foreign banking organization shall inform the Board through the appropriate Reserve Bank

(a) Authority. This subpart is issued by the Board of Governors of the Federal Reserve System ("Board") under

not permitted by regulation of order under section 5(a)(2) of the BHCA

each company's business in the United States

of the Board of Governors of the Federal Reserve System ("Board") under

of financial operations for this purpose, with the exception of acting as operators of nonresidential buildings (SIC 6512), operators of apartment

pany acquired, together with a statement of total assets and revenues of the direct parent.

(2) If any required information is

part, must be subsidiaries of bank holding companies but are not subsidiaries of banks;

(3) Bankers' banks as described in

ings (SIC 6514), and operators of residential

either because obtained it would be

(4) Foreign banking organizations

gaged in only with the approval of the Board under subsection (g): computer and data processing services (SIC 7372, 7373, and 7374)

information on the subject as it possesses or can reasonably acquire together with the sources thereof; and (ii) in

The definitions of § 211.2 in Subpart A apply to this subpart subject to the following:

ing activities (SIC 7394, 7312, 7313 and 7314), securities and bank

be involved or indicating that the company

(a) "Export trading company" means a company that is engaged in international trade and, by engaging in or

(1-1-91) Edition
for section 211.33

Federal Reserve System

§ 211.33

(12 U.S.C. 3101 et seq.; 12 U.S.C. 1841 et seq.; the export of, or from facilitating the

ne conditions of its subsidiaries. For purposes of this

principally conducted
with the basis for
foreign banking
from the Board
of Governors of the
Federal Reserve
System after the close of

SOURCE: 48 FR 26448, June 8, 1983, unless
otherwise noted.
§ 211.31 Authority, purpose and scope.
(a) Authority. This subpart is issued
by the Board of Governors of the Fed-
eral Reserve System ("Board") under
the authority of the Bank Holding

derived from all other activities of the
export trading company.
(b) The terms "bank," "company"
and "subsidiary" have the same mean-
ings as those contained in section 2 of
the EFC Act (12 U.S.C. 1841).

of this section... procedures of § 211.34 of this subpart as applicable

exports by encouraging investments Agreement corporation not engaged in

formation is... (3) Bankers' banks as described in... in a total amount that at no time ex-
ceeds 10 per cent of the investor's con-
solidated capital and surplus

of expense... defined in § 211.24(a)(2) of this part... the amount of...

required to... in an export trading company includes

(b) expansion of the

This section is referred to in sections 619, 1817, 1823,

with respect to such company should be terminated as provided in this sentence. Nothing in this

to

SECTION 1843B. 1956. ACQUISITION OF CONTROL

company

acquired or controlled after May 9, 1956, with

this paragraph) retain the ownership or con-

community to ward to take the compa-

ny within the meaning of that Act, after December 31, 1978, or, in the case of any company which becomes, as a result of the enact-

ment of this paragraph, a bank holding company that became a bank holding company as a result of the enactment of the Competitive

which provi- ch the oper- ing subsidi-

1980, retain direct or indirect ownership or control of any voting shares of any company

the enactment of such Amendments, that company shall, upon enactment of such

to state in its principal conducts its

ing banks and other subsidiaries authorized under this chapter or of furnishing services to or performing services for its subsidiaries, and

bank holding company, to extend the two year period referred to in paragraph (2) above from time to time as to such bank holding company

any order or regulation issued by the Board

any order or regulation issued by the Board

in addition to the public interest, but no such extensions shall in the aggregate exceed three

December 31, 1984, but only for the divestiture by

December 31, 1984, but only for the divestiture by

December 31, 1984, but only for the divestiture by

have taken- sion of law had taken- of Pub. L. 1484 of this

directly or through a subsidiary in any activity otherwise permitted by that proviso if it determines, having due regard to the purposes of this chapter, that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices; and in the case of any such company controlling a

company except a bank or bank holding company

After two years from May 9, 1956, no certificate evidencing shares of any bank holding company shall bear any statement purporting to represent shares of any other company except a bank or a bank holding company, nor shall the ownership, sale, or transfer of shares of any bank holding company be considered to

as a note on the day of in Pub. L. made by

which do not in-
of the out-
company;

proved to be sold on or before May 1, 1982, if
such new locations are confined to the State

other provision of this chapter, if the Board
finds that an emergency exists which requires

less than 10-

and any State or States in which insurance

tax of such institution applies in each State

event of the

ing on May 1, 1982, and approved subsequent

may have been approved by the Board

on of credit
any proper-
portion of
winning on
December 31,
not more
of an exten-
finance the
tured home

at the time of the acquisition, (1) any insur-
ance activity where the activity is limited
solely to supervising on behalf of insurance
underwriters the activities of retail insurance
agents who sell (i) fidelity insurance and
property and casualty insurance on the real
and personal property used in the operations
of the bank holding company or any of its
subsidiaries, and (ii) group insurance that
protects the employees of the bank holding
company or any of its subsidiaries; (2) any in-

foreign country the greater part of whose
business is conducted outside the United
States, if the Board by regulation or order de-
termines that, under the circumstances and
subject to the conditions set forth in the reg-
ulation or order, the exemption would not be
substantially at variance with the purposes of
this chapter and would be in the public inter-
est;

(10) shares lawfully acquired and owned

bank holding company, or by any of its

home) in-

insurance or annuities except as provided in
subsection (A), (B), or (C), or (C), where

its subsidiaries, may engage by virtue of this

provision

Federal Reserve System and which prior to

shall be a business which contract entered

unity for a
state insur-
insurance
in by the
subsidiar-
Board ap-
its subside

banking or managing or controlling banks the
Board shall consider whether its performance
by an affiliate of a holding company can rea-
sonably be expected to produce benefits to
the public, such as greater convenience, in-
creased competition, or gains in efficiency,
that outweigh possible adverse effects such

comes, as a result of the enactment of the
Bank Holding Company Act Amendments of
1970, a bank holding company on December
31, 1970, or by any subsidiary thereof, if such
company—

(A) within the applicable time limits pre-
scribed in subsection (a)(2) of this section

82, or ap-

the Board may differentiate between activi-
ties commenced before and activities com-

under this section; and

(B) commences with such other conditions

sale, or transfer of shares of any other company except a bank or a bank holding company.

(c) Exemptions

The prohibitions in this section shall not apply to (1) any company that was on January 1, 1977, both a bank holding company and a

(6) shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company;

(7) shares of an investment company which is not a bank holding company and which is not engaged in any business other than in-

from exempt from taxation under section 501(c)(3)

INCLUDE MORE THAN 5 PER CENTUM OF THE OUT-

stock of which was collectively owned on June 30, 1968, and continuously thereafter.

ing or managing or controlling banks as to be a member incident thereto, but for purposes of

holding company, apply to—

where the insurance is limited to assuring re-

any subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future year, or (B) any

ment of the debtor; (B) in the case of a fi-

subsidiaries of (A) holding company acquired

As used in collection of such debt, the

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction

purchase of a residential manufactured home and which is secured by such residential prop-

authorized upon application by such bank

the case of an extension of credit which is made to finance the purchase of a residential

subsidiary has been requested to dispose of

place that (i) has a population not exceeding

paragraphs (2) and (3) of section 1841(g) of this title;

sales of insurance at new locations of the same bank holding company or the same subsidiary or subsidiaries with respect to which

(5) shares which are of the kind and

where the insurance is limited to assuring re-

the circumstances and subject to the conditions set forth in the regulation or order, the exemption would not be substantially at variance with the purposes of this chapter and would be in the public interest; or

(12) shares of any company which is an

period if the Board issues written notice of its intent not to disapprove the investment.

(B)(i) The total amount of extensions of credit by a bank holding company which invests in an export trading company, when combined with all such extensions of credit

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whether direct or indirect, in such shares shall not exceed 5 per centum of the bank holding company's consolidated capital and surplus.

(A)(i) No bank holding company shall invest in an export trading company under this paragraph unless the Board has been given sixty days' prior written notice of such proposed investment and within such

of the preceding sentence, an extension of credit shall not be deemed to include any amount invested by a bank holding company in the shares of an export trading company.

(ii) No provision of any other Federal law in effect on October 1, 1982, relating specifically to collateral requirements shall apply with respect to any such extension of

unc any acti and cpe serv for flor Ini

(iii) The notice required to be filed by a bank holding company shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

posed investment only if—

(I) such disapproval is necessary to prevent unsafe or unsound banking practices, undue concentration of resources, decreased or unfair competition, or conflicts of interest;

export trading company

(i) may engage in or hold shares of a company engaged in the business of underwriting, selling, or distributing securities in the United States only to the extent that any bank holding company which invests in such export trading company may do so under applicable Federal and State banking laws and regulations; and

(ii) may not engage in agricultural production activities or in manufacturing,

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and soundness of any subsidiary bank of such bank holding company, or

(iii) the bank holding company fails to

a foreign country and to facilitate their sale in foreign countries.

such desc

(v) LEVERAGE.—The Board may not disap-

vestment or may be made subject to such

centu

which is proposed, unless the Board is satisfied that

which, in connection with the proposed investment, other than as may be necessary in the