

7A(c)(1)

[REDACTED]

[REDACTED]

[REDACTED]

This transmission contains 5 pages.  
Our Facsimile Number [REDACTED]  
Any Problems [REDACTED]

November 10, 1992

This material may be subject to the confidentiality provision of section 7A (h) of the Clayton Act which prohibits disclosure of information.

VIA FAX--202-326-2050  
NANCY OVUKA, Esq.

NOV 12 11 16 '92  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

Washington, DC 20580

Re: [REDACTED]  
Our File No. [REDACTED]

Dear Ms. Ovuka:

Further to our telephone conversation yesterday,

[REDACTED]

FACTS

Our client, a [REDACTED] company which is a subsidiary of a [REDACTED] ("Purchaser") is intending to [REDACTED] which is also a subsidiary of a [REDACTED] ("Seller").

[REDACTED]

The information contained in this facsimile communication is legally privileged and confidential information.

[REDACTED]

*form of  
lease  
financing*

The Secured Loans

In the case of the Secured Loans, Seller acts as

loans are typically evidenced by non-recourse promissory notes or other evidence of debt, security agreements perfected by Uniform Commercial Code ("UCC") filings with respect to both the [redacted] and the [redacted], and assignments of [redacted] to Seller, acknowledged by the [redacted] in question. The payments by the [redacted] to the equipment

[redacted] pay Seller directly.

Title to the [redacted] is held by the [redacted], but the [redacted] are responsible for and control the [redacted]. In [redacted]

*title  
responsible*

Purchaser will acquire from Seller the debt owed to

title holder to the [redacted] is leased to the end-users of the [redacted] as [redacted] the [redacted] are responsible for the [redacted]

subject to the Financing Leases.

439

*439  
439*

DATE: [redacted]  
SECTION 9: [redacted]

Value of Secured Loans and Financing Leases

The value of the [redacted] subject to the secured Loans and the Financing Leases exceeds \$15 million in the aggregate. However, the value of the [redacted] subject to the Financing [redacted] alone may be less than \$15 million.

QUESTION PRESENTED

Assuming that the value of the [redacted] subject to the [redacted] equals less than \$15 million, is the acquisition of the Secured Loans and the Financing Leases exempt under §7A(c)(2) and 7A(a)(3)(B) of the Act.

DISCUSSION

Section 7A(a)(2) and the Secured Loans [redacted] with respect to the secured loans, under §7A(c)(2) of the Act, acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities are exempt from the Act's notification requirements. Under §7A(c)(2)(B), acquisitions which aggregate less than \$15

The staff has previously taken the position that the acquisition of a leveraged [redacted] is not exempt from the Act under §7A(c)(2) on the ground that the acquisition of the [redacted] in [redacted] to the acquisition of the [redacted]

leases. The secured loans should be distinguished from the financing leases on a number of grounds.

does not acquire title to the [redacted] equipment. The [redacted] [redacted] is secured by [redacted]

subject to a [redacted] unless its borrower (the [redacted])

review is not get complete but believe it may be well less than \$15 million.

This material may be subject to the confidentiality provision of Section 7A (h) of the Clayton A. Act.

defaults and, in exercising its UCC remedies,  
account of its loan."

Second, the purchase of the Secured Loans is very

mortgages which the staff has previously deemed exempt from the Act. See ABA Premerger Notification Practice Manual, Item 26. As with commercial loans and mortgages, the Purchaser will have no right to proceed against the assets which secure its debt unless there is a default in payment to it. If it does proceed, Purchaser must act in a commercially reasonable manner under the UCC. (UCC §9-504)

§7A(a)(3) and the Financing Lease

lessor's position in a [redacted] would be deemed the acquisition of the underlying [redacted]. However, the value of the [redacted] subject to the [redacted] here may not reach the \$15 million threshold set by §7A(a)(3)(B).

Under 15 CFR §801.21(b), the value of the Secured Loans as "obligations" is not to be aggregated with the value of the [redacted] in determining whether the threshold under §7A(a)(3)(B) has been met:

Neither voting or nonvoting securities nor obligations referred to in section 7A(c)(2) shall be considered assets of another person from which they are acquired.

Therefore, in the event the value of the equipment subject to the [redacted] alone does not equal \$15 million, the acquisition of the [redacted] should not be subject to the Act's notification requirements.

2. The usual practice of most secured lenders of [redacted]

however, under the UCC to be sold at either public auction or private sale and to retain the proceeds on account of the debt.

this material may be subject to the confidentiality provision of [redacted]

Thank you for your kind consideration. We look forward to receipt of the staff's informal interpretation as soon as practicable. In the meantime, you should feel free to telephone me with any questions or comments.

Sincerely,

[Redacted signature]

11/13/92

Called [Redacted] Both "secured loans" and "financing leases" are lease financing transactions. In "secured loans", lender does not have "title", but does have a security interest in leased equipment

sub being acquired? If not, exempt under FA(c)(1). Smith & Sharpe concern.

This document may be subject to FOIA

Freedom of Information Act

[Redacted]