

66 802.1(a); 802.1(a)(1)

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This material may be subject to the confidentiality provisions of Section 7E(n) of the Clayton Act which restricts release under the Freedom of Information Act.

[REDACTED]

June 10, 1996

**VIA FACSIMILE
ORIGINAL VIA FEDERAL EXPRESS**

Richard D. Smith, Esq.
Premerger Notification Office
Room H-303
Federal Trade Commission

Re: Reportability of Acquisition of Equipment

Dear Mr. Smith:

We very much appreciate your time and assistance during our May 30, 1996 conference call. Pursuant to your invitation, we are writing to confirm the substance of that conversation.

We represent a U.S. corporation which is a subsidiary of a major U.S. industrial company and engaged in a variety of financial service activities, including the leasing business ("seller"). The seller is actively negotiating, and expects to acquire a subsidiary of a corporation,

reportable under the Hart-Scott-Rodino Act ("Act").

[REDACTED]

✓

[REDACTED]

The size-of-parties and the size-of-transaction test are satisfied in the subject transaction. The issue is whether the transaction is exempt under section 7A(c)(1) of the Act and Section 802.1 of the Rules, as recently amended, because it is "in the ordinary course of business."

First, you advised us that the acquisition is not disqualified from the statutory exemption by virtue of § 802.1(a), because it is not the "acquisition of all or substantially all the assets of an operating unit" The buyer will acquire all of the business and assets

items of equipment manufactured by parties other than the seller or an affiliate of the seller. This includes items such as [REDACTED] equipment, and currently represents less than 5% of the revenue of the seller. None of the leases or installment sales contracts which are to be sold relate to consumer goods or transactions. The seller will remain in the equipment financing business, including the financing of business machine products manufactured by its parent corporation and affiliates and a wide variety of "larger ticket" products manufactured by others.

No real estate is being transferred as part of this acquisition. Initially, for an interim period of approximately six months, the buyer will occupy space in offices of the

seller who currently spend all or part of their time on matters relating to the "custom vendor finance" group are expected to be hired by the buyer.

Because the goods which are the subject of the leases and other financing

course of business if the goods are not acquired as part of the sale of an operating unit and if any of four specified criteria are met. In this case, subsection (d)(1) would apply. That subsection applies to "goods [which] are acquired and held solely for the purpose of resale in

We understand that, under the facts and circumstances set forth above, it is the position of the Staff that this transaction is exempt from the reporting obligations of the Act

[REDACTED]

[REDACTED]

pursuant to § 7A(c)(1) of the Act and § 802.1. Please confirm this conclusion as soon as you are able to confer with your colleagues in the Premerger Office. We request that this information and the information disclosed in our telephone conference be treated as confidential.

Thank you for your consideration and assistance. If you have any questions or require any assistance, please feel free to call (collect) me at the number listed on the return of my partner.

Very truly yours,

cc: [REDACTED] (via facsimile)

6/12/96 Advised writer that no "operating unit" of the seller appears to be sold. Seller will continue to ~~sell~~ lease and finance business machine products which it will produce as well as ~~sell~~ ~~it~~ ~~was~~ produced by others. No specific facility or location is being transferred. Consequently, 802.1(a)(1) [REDACTED] (d)(2) would apply and exempt transfer to buyer which will continue to lease or hold the assets subject to the retail equipment sales contracts. (Writer advised that there is no problem in [REDACTED] available to the public through normal BIA channels.)

[REDACTED]