



November 16, 1999

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BY FAX TO 202 / 326-2624  
Thomas Hancock, Esquire  
Premerger Notification Office  
Federal Trade Commission  
6<sup>th</sup> Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Dear Mr. Hancock:

The purpose of this letter is to confirm our understanding regarding certain credit union assets that the Federal Trade Commission (FTC) would view as exempt from the notification rules in the case of a merger of two corporate credit unions. Our understanding is based on conversations with FTC staff attorneys and our review of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C.

Background

Credit unions are nonprofit, membership cooperatives that provide financial services to their members. Credit unions, which may be chartered under federal

specific geographic community. Credit unions provide saving and credit services. Saving services includes share savings and draft accounts, share certificates, and credit services includes secured and unsecured consumer loans

made up of so-called natural person credit unions. They function essentially like

well as acting as clearing houses for financial transactions. Natural person credit unions are not limited to corporate credit unions as a source of liquidity or for clearing activities but may also turn to banks. Corporate credit union charters are generally geographic in that they are chartered to serve credit unions within a

The Nature of a Credit Union Merger

disapprove a merger. If they approve the merger, the members of the acquired credit union simply become members of the acquiring credit union and their accounts are transferred. The merger of federally-insured credit unions requires the approval of the National Credit Union Administration. 12 U.S.C. § 3702(a)(1)

Exempt Assets

Assuming that a merger between two federally-chartered corporate credit unions

§18a(a)(3); 16 C.F.R. §802.20.

16 C.F.R. §801.21

Under this regulatory provision, voting or nonvoting securities, other obligations

exempt

Investment accounts. Credit unions are limited by statute to particular types of investments. 12 U.S.C. §1757(7), (8), (15). Corporate credit unions have an expanded investment authority. 12 C.F.R. §704.5(c). Generally,

money market purchases, third party repurchase agreements, deposits in the

Accrued income on these investments is likewise exempt.

<sup>1</sup> Includes Federal Home Loan Bank stock and nonvoting stock in the National Credit Union

Prepaid expense and prepaid tax accounts.

Settlement accounts including check clearing, automated clearing house, and Federal Reserve Bank transaction accounts established in connection with providing settlement services to member credit unions. To illustrate, each day member credit unions may deposit thousands of checks into their accounts with the corporate credit union for clearing. The corporate credit union aggregates these deposits and enters the dollar value of these checks in an asset account with a corresponding entry in a liability account. As checks clear, the corporate credit union releases funds to its members. If a check clears, the corporate

account to the member's share account from which the member can withdraw

these temporary settlement accounts are essentially an accounting mechanism and are exempt as the equivalent of cash under 16 C.F.R. §801.21.

16 C.F.R. §802.2(d)(2)

The provision exempts office property that is real property and includes office and "assets incidental to the ownership of such property, including cash, prepaid

exempt

This provision of the HSR Act exempts acquisitions of "bonds, mortgages, deeds of trust, or other obligations which are not voting securities" from the premerger notification requirements.

We would appreciate your consideration of two particular types of loans or lines of credit that we believe should be exempt under 16 C.F.R. §801.21 as cash equivalents.

Loans secured by cash assets in the possession of the credit union. Credit unions often make loans that are secured by cash deposits (member shares) of the debtor at the credit union. If the debtor defaults, the credit union has the right, without court intervention, to immediate possession and use of the cash

union. We believe these "overnight" settlement lines of credit should be treated as cash equivalents exempt under 16 C.F.R. §801.21(a).

Date of Valuation

We have also considered the date on which the assets of the acquired credit union are to be valued for purposes of measuring those assets against the \$15 million size-of-transaction threshold. The corporate credit union merger at issue is scheduled to be consummated on December 31, 1999, and so we are now

assets of the acquired institution on any particular day between now and the merger, and if the aggregate nonexempt assets of the acquired corporate are below \$15 million on that one day, the acquiring corporate will not have to submit an HSR filing. We understand that this interpretation would have to be qualified if the acquiring corporate has acquired other assets of the acquired corporate in the preceding 180 days. 16 C.F.R. §801.13(b)(ii).

We would appreciate your review and informal opinion of our analysis regarding exempt assets and the date of asset valuation.

Sincerely,

[Redacted signature]

11/16/99

I informed the writer that the approach reflected in this letter seems to be reasonable and the conclusions reached seem not unreasonable.  
T.H.H.