7A(6)(i)

[redacted]

ATTORNEYS AT LAW

[redacted]

[redacted]

[redacted]

EMAIL ADDRESS [redacted]

CLIENT/MATTER NUMBER [redacted]

September 6, 2000

VIA HAND DELIVERY

Patrick Sharpe
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Patrick:

I am writing to confirm my understanding of telephone conversations we had yesterday concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act") of a proposed transaction discussed below.

Our client, Corporation A, is engaged in the business of asset based lending and factoring. Corporation A, is in turn, controlled by Corporation B, a large national bank. Corporation A is selling a loan portfolio ("Loan Portfolio") to Corporation C, an unrelated entity also engaged in asset based lending and factoring, for a purchase price of approximately $100 million based on the outstanding principal balance of the Loan Portfolio plus the payment of a premium.

The Loan Portfolio is part of an unincorporated division of Corporation A ("Division"). The Division is engaged in asset based lending and related loan administration. The Loan Portfolio constitutes at most approximately 65% by dollar value of the loans administered by the Division. The Division administers loans from approximately 5 offices located in different states, and is qualified to do business in several more states for the purpose of originating loans. The Loan Portfolio principally includes most, but not all --approximately 90% by dollar value -- of the loans administered by the Division's office in City A, the Division's sole office in state A. The Loan Portfolio also includes loans administered by one or more other offices of the Division, but the loans attributable to any one of these other offices is less than the majority of loans administered by that particular office. The Division will take back participation in several of the loans in the Loan

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Portfolio, with this participation representing in aggregate approximately 15% to 20% of the dollar value of the loans being sold to Corporation C.

In addition to acquiring the Loan Portfolio, as a part of the approximately $100 million purchase price, Corporation C will acquire the physical space of the Division's office of City A, including assumption of the lease and acquisition of certain furniture and equipment. However, the Division will continue to loan funds and administer loans in City A from a new, but smaller office in City A. The Division also will continue to loan funds and administer loans from its other offices. Corporation C will not acquire the right to use the Division's or Corporation A's name. Certain of the current employees of the Division's office in City A may be hired, but are not required to be hired, by Corporation C after the transaction. The most senior employee in the Division's office in City A will remain with the Division's new, smaller office in City A, as may other current employees.

You concluded that the transaction was exempt under the HSR Act. Specifically, you concluded that the transaction was exempt as "acquisitions of goods or realty transferred in the ordinary course of business" under Section 7A(c)(1) of the Clayton Act, 15 U.S.C. § 18(a)(c)(1), and that the transaction would not be viewed as the acquisition of an "operating unit" under 16 C.F.R. § 802.1(a).

In support of this conclusion, you noted that the Division was not "exiting" the loan business, and that not "substantially all" of the loans administered by the Division were being acquired. You noted that even acquiring 75% of the assets of a division had been viewed by the FTC as not constituting "substantially all" of the assets of a division such that the ordinary course exemption may not apply, while acquiring 90% of the assets of a division would be viewed as "substantially all" the assets of a division. You also confirmed that for the ordinary course exemption to apply there was no requirement that the specific parties to this transaction regularly engage in the buying or selling of loans.

I noted that it's generally in the ordinary course of business to buy and sell loans for banking and finance companies. It does have to be in the ordinary course of business

Further, you confirmed that the acquisition by Corporation C of the physical space of the Division's office of City A, including assumption of the lease and acquisition of certain furniture and equipment would not make the ordinary course exemption inapplicable in the context of the sale of a portfolio of loans, and that the sale of the office related assets would not be separately reportable.

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.

Very truly yours,

[redacted]

[redacted] call [redacted] 9/7/00 – I concur with this letter with an exception noted.