[redacted]

7A(c)(1)

February 20, 2001

**BY FAX 202.326.2624**

Ms. Alice Villavicencio
Compliance Specialist
Premerger Notification Office
Federal Trade Commission
Room 301
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

2001 FEB 20 P 12:18

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

RE: Applicability of Exemption for the Acquisition of Goods and Realty in the Ordinary Course of Business

Dear Ms. Villavicencio:

Thank you for your time on February 15 and 16, 2001 to discuss the potential applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act") to a proposed transaction. This letter memorializes our telephone conversations and the advice you gave on February 16, 2001.

Our conversation was about whether the purchase and sale of accounts receivable among affiliates is reportable under the Act. I explained that I represent a company that intends to repurchase accounts receivable that it previously sold to an affiliate pursuant to a long-standing arrangement under which the two companies have regularly bought and sold accounts receivable from each other. I described the relationship between the companies and the proposed transaction as follows:

> Company A is in the retail and wholesale business. It regularly extends credit to its retail and wholesale customers. Company A regularly extends credit on approximately 90% of its retail and wholesale sales volume. The majority of Company A's accounts receivable are retail accounts. Company A maintains a separate credit department that administers all retail accounts receivable. Company A carries a significant amount of accounts receivable on its books.
>
> Company B is a finance company. It regularly purchases accounts receivable without recourse from Company A and extends credit to Company A's retail and

[redacted]



wholesale customers. In addition, Company B administers the wholesale accounts receivable of Company A. Company B carries a significant amount of accounts receivable on its books.

Company A is the largest single shareholder of Company B. Company A owns 38.4% of the issued and outstanding voting securities of Company B.

For a number of years, Company A and Company B have operated under an agreement whereby Company B purchases from Company A on a regular basis a significant portion of Company A's retail and wholesale accounts receivable so that Company A can obtain more favorable financing. Company B purchases these accounts receivable from time to time at its sole option. The agreement also permits Company A, with the consent of Company B, to repurchase accounts receivable from Company B from time to time under certain circumstances.

The aggregate size of the purchases and repurchases of accounts receivable is substantial. For example, in calendar years 1999 and 2000, Company B purchased approximately $1.3 billion and $1.4 billion, respectively, of accounts receivable from Company A in approximately 24 and 10 transactions, respectively. In 1999 and 2000, Company A repurchased approximately $59 million and $83 million, respectively, of accounts receivable from Company B in approximately 18 and 4 transactions, respectively.



Company A does not sell or buy accounts receivable to or from anyone other than Company B, except that Company A recently entered into an asset securitization agreement through one of its banks whereby it sells some wholesale accounts receivable as part of an asset securitization plan. Likewise, Company B does not sell or buy accounts receivable to or from anyone other than Company A.

Company A and Company B intend to temporarily suspend the sale of Company A's accounts receivable to Company B. In connection with this suspension, Company A would repurchase, in a single transaction, up to approximately $200 million of accounts receivable previously sold to Company B. Neither company will exit its credit business or a specific geographic area as a result of the repurchase transaction.

With this description in mind and assuming that the size-of-the-parties test is met by both parties, I asked whether the exemption under 15 U.S.C. § 18A(c)(1) and 16 C.F.R. § 802.1 for goods or realty purchased in the ordinary course of business would apply to the proposed repurchase transaction, thereby removing the requirement for either company to report under the Act.

[redacted]



During our February 16, 2001 conversation, you indicated that the exemption for goods or realty purchased in the ordinary course of business would apply to the proposed repurchase transaction if (1) neither company was exiting the business of extending credit as a result of the repurchase transaction, and (2) neither company was exiting a specific geographic area as a result of the repurchase transaction. Because the companies will meet both of these conditions, you advised me that the exemption in ~~16 C.F.R. § 802.1(a)~~ would apply and neither company would be required to report this transaction under the Act. → 7A(c)(1) Ordinary Course of Business

If the foregoing does not correctly summarize your advice (or the advice you would give based on the facts set forth in this letter), please call me at your earliest convenience at [redacted] the foregoing correctly summarizes your advice (or the advice you would give based on the facts set forth in this letter), please fax me written confirmation of that fact at [redacted]

Thank you again for your help with this matter.

Call Waiver
2/21/01

Sincerely,

[redacted]

FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE
2001 FEB 20 P 12:19