

7A(C)(1)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

May 13, 2002

CONFIDENTIAL

**VIA E-MAIL AND FIRST-CLASS MAIL**

mverne@ftc.gov

B. Michael Verne, Esq.  
Premerger Notification Office  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room 301  
Washington, D.C. 20480

**Re: Application of HSR Exemptions**

Dear Mr. Verne:

I am writing to confirm guidance provided during our telephone conversation on Tuesday, April 16, 2002 (in which [REDACTED] also participated), concerning the applicability to the proposed transaction described below, of the exemptions from the notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") set forth in 15 U.S.C. §18a(c)(1) and 16 C.F.R. §802.1 (which covers acquisitions in the ordinary course of business), and in 15 U.S.C. §18a(c)(2) (which covers acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities).

The proposed transaction is as follows:

(1.) A national bank (or an operating subsidiary of a national bank) ("Purchasers") will purchase certain asset-based loans from a non-bank subsidiary ("Seller") of another U.S. bank ("Parent"). Approximately twenty-seven loans will be purchased, either at par or at a discount from par, with an aggregate outstanding principal indebtedness of approximately \$200 million. The loans are commercial loans to businesses secured, in general, by blanket liens on assets of the borrowers.

(2.) Purchaser will acquire no tangible or other intangible assets from Seller. The purchase agreement may include a restrictive covenant that prohibits Seller for a specified period

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from interfering with Purchaser's relationships with the borrowers who are parties to the loans being assigned.

(3.) Seller operates four commercial lending offices — one on the West Coast, one in the Midwest, and two in the State of New York. Following the proposed transaction, Seller intends to close the West Coast and Midwest offices, and Seller and/or Parent will continue to engage in asset-backed commercial lending in the Eastern States out of its offices in New York State. Seller and/or Parent will retain approximately ten to fifteen loans, which were originated and are serviced from the West Coast or Midwest offices. Seller and/or Parent will service these loans from its offices in New York State. Seller also has many other asset-backed commercial loans which are not being purchased by Purchaser and which were originated and are serviced from its New York State offices. These loans have an aggregate outstanding indebtedness in excess of \$200 million.

(4.) Parent and its other affiliates have lending offices in various states throughout the United States and will continue to operate these offices following the proposed transaction, subject to any restrictions that are included in the assignment agreement as described above.

We discussed application of the exemptions identified above to this proposed transaction. You advised that the exemption in 15 U.S.C. §18a(c)(2) would not apply, due to the FTC's present position that this exemption covers loans secured by real property (i.e., mortgages), but does not cover commercial loans secured by liens on other collateral, such as accounts receivable or inventory.

With respect to the exemption in 15 U.S.C. §18a(c)(1) and 16 C.F.R. §802.1 (the ordinary course of business exemption), you advised that there does not appear to be any reason why this exemption should not apply based on the facts we described as set forth above. You observed that, with respect to asset-backed lending and similar financial services for businesses, the FTC has not applied a narrow geographic definition of an "operating unit" in applying this exemption, given the number and diversity of providers of such services. You also observed (i) that Seller's intention to close two of its lending offices following the proposed transaction is not determinative of whether Purchaser would be deemed to be acquiring an operating unit from Seller, and (ii) that consideration should be given to what Purchaser is acquiring -- in this case only a purchase of loans and not any tangible or other intangible assets associated with the offices to be closed.



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We appreciate your attention to this matter. Please advise us if this summary of our discussion and your observations is inaccurate in any material respect.

Best regards,

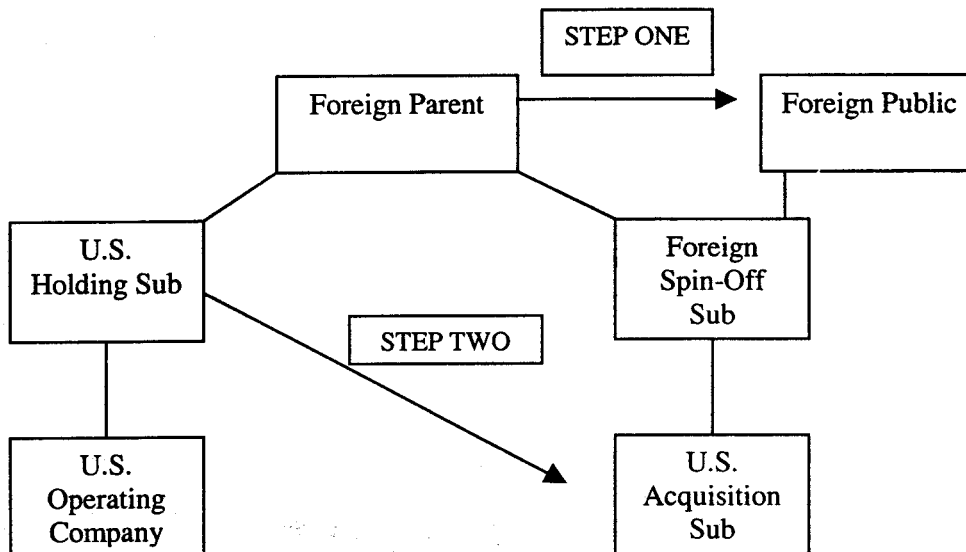
cc: [REDACTED]

AGREE - THIS CAN BE EXEMPTED UNDER  
7A(C)(1).

B. Michael Verne  
5/14/02

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## Proposed Transaction



1. Foreign Parent is planning to spin off certain of its assets to its existing shareholders. Foreign Parent is large public company and there is no controlling shareholder. To accomplish this, Foreign Parent will collect the assets under the direct or indirect ownership of Foreign Spin-Off Sub, and distribute the equity in Foreign Spin-Off Sub to its existing shareholders.
2. One of the assets to be included in the spin-off is U.S. Operating Company to be held through U.S. Acquisition Sub. U.S. Holding Sub will sell the equity interest in U.S. Operating Company to U.S. Acquisition Sub pursuant to a stock purchase agreement.
3. The sale to U.S. Acquisition Sub is expected to happen shortly after the spin-off, but may be delayed if certain third-party consents are not obtained. At the time of the spin-off, U.S. Holding Sub and U.S. Acquisition Sub would be legally obligated to consummate the purchase, subject to these third-party consents.
4. There would be no controlling shareholder of Foreign Spin-Off Sub after the spin-off.

ADVISED THAT STEP ① IS EXEMPT UNDER 7A(C)(10) ASSUMING THE DISTRIBUTION OF SPIN-OFF SUB IS PRO-PRATA. THE ACQUISITION OF U.S. OPERATING COMPANY BY U.S. ACQUISITION SUB IS REPORTABLE. N. OVOKA CONCURS.

B. Michael  
5/11/02