

7A(c)(1)



December 4, 2002

**Via E-mail - mverne@ftc.gov**  
**& Federal Express**

B. Michael Verne, Esq.  
Premerger Notification Office  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

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FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

Re: Application of HSR Ordinary Course Exemption

Dear Mr. Verne:

I am writing to confirm guidance you provided during our telephone conversations on Thursday, November 21, 2002 and Monday, December 2, 2002 (in both of which [redacted] LP also participated), concerning the applicability to the proposed transaction described below of the exemption from the notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("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.

The proposed transaction is as follows:

1. A non-bank subsidiary ("Seller") of a U.S. bank ("Parent") will sell a portion of its portfolio of equipment finance leases and loans secured by equipment (collectively, "Equipment Loans") to an unrelated entity ("Buyer"). Seller's entire portfolio of Equipment Loans currently has an aggregate outstanding principal amount of approximately \$1.3 billion. The Equipment Loans being sold by Seller to Buyer have an aggregate outstanding principal amount of approximately \$250 million. Buyer will set the criteria for determining which of Seller's Equipment Loans it will purchase.

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2. Seller will retain approximately \$1 billion (outstanding principal amount) of its portfolio of Equipment Loans. Seller currently has no plans to dispose of this retained portion of its Equipment Loan portfolio. However, Seller may give Buyer a first right to purchase Seller's other Equipment Loans if and when Seller decides to sell such loans. Buyer will have no right to require Seller to sell its other Equipment Loans to Buyer other than through the potential exercise of such first right to purchase. The parties are not entering into any type of noncompetition agreement. Nothing in the agreement between Seller and Buyer will prohibit Seller or Parent from soliciting current customers and other potential customers.

3. Buyer will agree to service Seller's retained Equipment Loans.

4. In connection with the sale of Equipment Loans to Buyer, Seller will also sell to Buyer certain intellectual property assets, which primarily consist of a software system for equipment loans and leases. Buyer will need the software system to service the Equipment Loans being purchased from Seller, to service Seller's retained Equipment Loans, and for Buyer's own new equipment leasing and lending transactions. The value of the software system is approximately \$800,000.

5. Also in anticipation of the sale of Equipment Loans to Buyer, Seller has moved the main office of its equipment finance operation, which is primarily involved in "back office" functions in connection with servicing the Equipment Loans, from an office building primarily occupied by Parent to a nearby building in the same city in which Parent has leased space. This office will be transferred to Buyer in connection with the sale of Equipment Loans. Buyer will sublease the real property from Parent and will acquire certain furniture and office equipment of Seller to be located at this office. The furniture and office equipment is of minor value.

6. Approximately 45 of Seller's 60-70 employees will become employed by Buyer. Seller will agree not to solicit or to hire these employees for re-employment for a specified period of time.

7. Besides the office described at paragraph 5 above, Seller currently has 24 sales offices (which are located in 19 states) and 3 other offices (which are located in 3 states). Each of the sales offices is a one salesperson office, other than one of the sales offices which has three salespersons. Seller plans to close 13 of its sales offices, and Buyer will acquire 11 of Seller's sales offices. Seller will retain its 3 other offices. Given the locations of the 3 offices that Seller will retain and the states in which Parent has or will have offices, Seller and/or Parent has or will have offices in 8 states, 7 of which are states where Seller's sales offices are currently located.

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8. Seller's equipment financing business is currently national in scope and it is expected to continue to be national for some time given that it is keeping \$1 billion of its portfolio of Equipment Loans. The Equipment Loans generally have a five-year run off, so over time it is expected that there will be some shrinkage in the geographic coverage of Seller's Equipment Loans.

9. Parent lends to companies throughout the United States, both as an individual lender and as part of a group of lenders for syndicated loans. Parent has or will have offices in approximately seven states along the East and West coasts. Parent has approximately \$44 billion of commercial loans outstanding in the United States. Of this amount, approximately \$8.5 billion is term loans. Parent's equipment financing loans are included within the \$8.5 billion, but cannot be separately quantified because this type of financing is not separately tracked by Parent. Parent will continue to make commercial loans throughout the United States, which will include equipment-based loans.

10. Seller and Parent have indicated that collectively they are neither exiting a line of commerce nor discontinuing a product or line of financing. Instead, Seller and Parent are restructuring the manner in which equipment-based financing is offered. Parent will continue to make equipment-based loans. Seller may, but does not intend to continue to, offer equipment-based financing.

We discussed the application of the HSR ordinary course of business exemption set forth in 15 U.S.C. § 18a(c)(1) and 16 C.F.R. § 802.1. You advised that this exemption applies to Seller's sale and Buyer's purchase of Equipment Loans based on the facts as we described them during our telephone conversations and as set forth above.

You did note that Buyer's acquisition of the software system, furniture and equipment and sales offices does not qualify for the ordinary course exemption. However, the total value of these assets is well below the HSR size of transaction threshold.

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

Very truly yours,

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cc: [REDACTED]

AGREE -  
B. Michael Verne  
12/8/02