

[REDACTED]

[REDACTED] CORPORATION

[REDACTED]

[REDACTED]

[REDACTED]

E-MAIL ADDRESS [REDACTED]

WRITER'S DIRECT [REDACTED]

WRITER'S DIRECT FAX: [REDACTED]

[REDACTED]

August 4, 2003

By email to novuka@ftc.gov

Nancy Ovuka, Esq.
 Premerger Notification Office
 Federal Trade Commission
 600 Pennsylvania Avenue, NW
 Washington, D.C. 20580

Re: Ordinary Course of Business Exemption

Dear Nancy:

Thank you very much for taking the time to discuss the application of the ordinary course of business exemption to this transaction. Based on our discussion, I understand that the transaction would be exempt from the filing requirements of Section 7A of the Clayton Act as a transaction in the ordinary course of business under 7A(c)(1).

I wanted to review the basic facts I discussed with you. To avoid the risk of disclosing confidential information under a FOIA request, I have intentionally discussed the client's operations generally, though the description is materially complete. If you believe that any facts essential to your determination are missing from this letter, I would appreciate it if you would please let me know, so that I can include them. Otherwise, the rest of this letter accurately sums up the material facts.

The seller and ultimate parent entity is a large international insurance company that also engages in commercial lending, including limited banking activities. The buyer is also a large financial services company.

The seller intends to sell subsidiaries and/or divisions that offer specialized commercial credit or financing products and services in several industry segments. The outstanding loan and lease receivables (owned and managed) to be sold amount to about \$8 Billion dollars. While the parties have not finally determined whether the transaction will take the form of an assets or stock acquisition (or some combination), for segments representing about half the portfolio value the buyer will also acquire employees and systems/facilities supporting the purchased credit port-

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folios. These employees and systems/facilities do not conduct other ancillary business activities that would be valued, in aggregate, at more than \$50 million.

The seller intends to remain in the general commercial credit industry in which it will continue to engage in a broad variety of commercial lending. However, it will *not* continue to engage, in whole or in part, in certain segments of the commercial lending and financial services industry that relate to the businesses and portfolios that it is selling in this contemplated transaction.

The seller will continue to make available commercial credit in different segments of the private debt industry, both through financing pools, syndicates or banks, and also directly to some specific corporate borrowers. These commercial credit transactions are typically documented by way of promissory notes, as well as other documentation, and may cover both secured and unsecured lending. The seller will also continue to extend credit in the commercial real estate industry, where it typically finances substantial projects such as major office buildings and retail complexes. This credit is typically secured by mortgages. The seller will also continue to operate in the commercial equipment leasing industry, which functions as a financial alternative to commercial borrowing. The overall value of the lending businesses that the seller intends to retain amounts to about \$100 Billion of loan and lease receivables. (A small proportion of this money may originate from the seller's operations outside the United States, but the commercial lending activities discussed involve commercial loans made within the United States.)

I understand that the Premerger Notification Office's interpretation of the ordinary course of business exemption as applied to acquisitions of credit operations is that the exemption applies when the seller will continue to hold existing loans or will continue to make new loans, even though those loans may be in different segments of the commercial credit industry. I also understand that the exemption applies both whether the businesses are acquired as an asset or voting securities acquisition, and also whether or not the buyer will also be acquiring staff and/or facilities servicing the loan and lease portfolios and businesses.

If I have correctly summed up our discussion that this transaction is exempt from notification requirements, I would appreciate it if you would please initial this letter to confirm that. Again, thank you very much for taking the time to discuss this with me.

Sincerely,




Confirmed advice ^{8/4}
by telephone
NMO

M. Verne concurs