

Verne, B. Michael

7A(c)(1)

From: [REDACTED]
Sent: Wednesday, February 20, 2008 3:20 PM
To: Verne, B. Michael
Subject: HSR Reportability of a Potential Transaction

Dear Mike:

I am writing to memorialize the advice you gave me yesterday regarding potential HSR reporting obligations in the transaction described below. Please let me know if you think I have not accurately summarized that advice.

The Proposed Transaction

Corporation A is a United States corporation engaged in a variety of financial and non-financial businesses, including the credit and charge card business. Corporation A conducts its credit and charge card business through a number of subsidiaries and divisions.

Corporation A is contemplating a transaction in which it will sell its commercial credit and charge card portfolio and certain related assets. Corporation A will, however, retain its consumer credit card business and its business of issuing private label credit cards (i.e. cards that are merchant-specific) to both commercial customers and individuals. Corporation A will not be transferring to the buyer any of the banks through which it offers its credit or charge card products.

In addition to its own commercial credit and charge card portfolio, Corporation A also offers its products, services, and technology to other banks through a "white label" product offering under which the issued card carries the client bank's brand name but relies on Corporation A's systems. Corporation A operates this business under two different models. In some cases Corporation A has the credit risk and owns the receivables, and simply pays the client banks a fee to be able to use their name. In other cases Corporation A's clients pay it a fee for the use of its technology and services, but the bank clients issue the cards and assume the credit risk.

Finally, Corporation A also offers its commercial clients what it calls a "virtual payment" product. Rather than relying on physical cards, this product relies on one-time use credit card/charge card numbers (similar to the one-time use account numbers offered by some consumer credit card providers for online purchases). This product interfaces with the client's accounts payable system so that instead of printing a check or initiating an electronic funds transfer, the vendor is paid using a one-time use credit card number.

Analysis

Parts of this transaction are comparable to the acquisitions of credit card portfolios that have been deemed ordinary course transactions exempt under Rule 802.1 because they do not involve the sale of substantially all the assets of any business unit.

Because Corporation A will continue to be in the credit card business (both consumer credit cards and private label cards for consumer and commercial customers), we understand that under Rule 802.1 its credit and charge card portfolio will be an exempt asset, the value of which should not be included in determining whether the transaction will be HSR reportable. We understand that this would be true regardless of whether or not Corporation A would be selling assets or the equity of subsidiaries of the businesses through which it offers its commercial credit or charge card products.

With respect to Corporation A's "white label" business, we understand that the sale of credit card receivables owned by Corporation A (i.e. in cases where Corporation A pays other banks a fee to offer cards under their name) will be treated as an ordinary course transaction. However, any value separately attributable to the white label card business, rather than the receivables, will not be treated as a sale in the ordinary course because it is a servicing business, not a financing business. Moreover, Corporation A will not remain in this business after the contemplated sale.

Finally, with respect to the virtual payments business, we understand that the value of the credit card/charge card receivables associated with this product line will be treated as an exempt asset. However, any other value attributed to this product line will not be treated as an exempt asset.

I very much appreciate the time you took to discuss this with me and to review this summary of our discussions. I hope I have accurately summarized the staff's position on these issues, but if I have misinterpreted your comments, please let me know that.

Best regards,
[Redacted]

AGRES
B
2/20/08

This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

[Redacted]