

Verne, B. Michael

7A(c)(1)

**From:** [REDACTED]  
**Sent:** Tuesday, May 27, 2008 4:59 PM  
**To:** Verne, B. Michael  
**Subject:** HSR Advice - Ordinary Course of Business Exemption

We seek confirmation that the proposed transaction described below is exempt from the notification and waiting period requirements of the HSR Act by virtue of Section 7A(c)(1) of the Act and Section 802.1 of the FTC Premerger Notification Rules, which cover transactions in the ordinary course of business (OCB Exemption). Pertinent facts are as follows:

1. Seller (which includes the ultimate parent entity and its controlled affiliates) is a diversified commercial lender that provides a variety of commercial financing and equipment financing services throughout the United States and elsewhere. Seller also holds and services certain consumer loan portfolios, primarily for home lending and student lending products, for which Seller no longer originates new transactions.

2. Seller's equipment financing subsidiary ("EF Subsidiary") proposes to sell substantially all of the assets associated with a business unit engaged in originating, marketing, purchasing, selling, and servicing equipment loans, leases, and other finance services for end users and other participants in the rail transportation industry (i.e., rail cars, locomotives, and a small portfolio of containers and barges), including its portfolio of leases (including operating, financing, leveraged, and synthetic leases), loans (including senior secured, mezzanine, and subordinated loans), and interests in sale/leaseback and other financing transactions in that industry.

3. Seller, through the EF Subsidiary and other financing and leasing subsidiaries, provides similar services for customers in a variety of other industries, including aerospace, trade finance (i.e., retail supply chain), corporate finance (including for customers in health care, energy, communications, and media/entertainment, among other industries), and vendor financing for customers of vendor clients in a variety of industries, and will continue to do so following closing of the proposed transaction.

4. The assets to be sold comprise approximately five percent and 35 percent, respectively, of the total loan/lease portfolio of the Seller and the EF Subsidiary.

5. Upon closing of the proposed transaction, Seller will discontinue financing services as a primary business for customers in the rail transportation industry as described above, at least during the term ("Restriction Period") of a restrictive covenant that is likely to be negotiated as part of the proposed transaction. Seller may retain the right during the Restricted Period to provide limited equipment loans, leases, and other financial services for customers in that industry, including vendor financing of non-rail assets, and other financing incidental to Seller's continuing financing services primarily focused on other industries. Seller also may continue to hold and service existing portfolios of loan/lease assets in the rail transportation industry that it presently holds outside the EF Subsidiary, but the total size and value of same is small in relation to the assets to be sold. Accordingly, Seller anticipates that, during the Restricted Period, any financing services that it provides in the rail transportation industry would represent a de minimus percentage of Seller's equipment financing assets and revenues. Any such

restrictions on Seller would cease at the end of the Restriction Period.

6. Seller anticipates that the Purchaser will be will be selected through an auction process that the Seller will conduct with assistance from its investment banking advisor. The potential Purchasers are comprised of both private equity investors, and diversified national and international lenders that provide and will continue to provide a wide range of commercial and consumer financial services, including certain companies that provide financing services in the rail transportation industry.

7. Seller exceeds the size of person tests under the HSR Act and expects that the Purchaser will as well. Seller also expects that the total purchase price for the transaction, stated as a cash premium over the net book value of the assets to be acquired, will exceed the minimum size of transaction threshold under the HSR Act.

8. Seller anticipates that Purchaser will hire substantially all of Seller's staff (approximately 80-100 persons) who work directly with the EF Subsidiary's loan/lease assets in the rail transportation industry that will be sold, but the EF Subsidiary and the Seller employ many other staff (approximately 150 and 6,000, respectively), who perform similar functions for Seller's commercial financing and equipment financing services focused on other industries as described above.

Based on the above statement of assumed facts, the proposed transaction is covered by the OCB Exemption because Seller will continue to provide financing, lease financing, and loan servicing services for customers in a variety of industries following the sale of substantially all of its assets associated with Seller's business unit focused on the rail transportation industry as described above. We believe this is the case due to the nature of the loan/lease financing services that the Seller and the EF Subsidiary provide, even if in the context of other products or services the business unit in question might be characterized as an "operating unit" as that term is used in the OCB Exemption. See, e.g., ABA Section of Antitrust Law, Premerger Notification Practice Manual (4th ed. 2007), Interpretation 8; Informal interpretations 0411006, 0308001, and 0306007, published on FTC website, available at <http://www.ftc.gov/bc/hsr/informal/index.shtm>.

Please advise if you wish to discuss this matter, or confirm that you concur with the conclusions noted as based on the above statement of facts.

Best regards, [REDACTED]

[REDACTED]

ACREE  
Bm  
5/29/08

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