

Verne, B. Michael

7A(c)(1)

From: [REDACTED]
Sent: Monday, July 18, 2011 9:20 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Question re: ordinary course of business exemption

Mike,

We represent the acquiring party in a proposed acquisition and we would like to confirm with you that the "ordinary course of business" exemption provided in Section 7A(c)(1) and 16 CFR 802.1(a) applies to the proposed transaction. We believe that an HSR filing is not required, since the proposed transaction qualifies as an acquisition of credit card receivables in the ordinary course of business.

For the purposes of this analysis, please assume that the HSR Act's size-of-person and size-of-transaction tests are satisfied.

Company A, a bank holding company, intends to acquire from Company B, also a bank holding company, all of the outstanding voting securities of Bank B1, a state-chartered bank, for approximately \$3.5 billion (the "Bank Stock Purchase"). This transaction is subject to Section 3 of the Bank Holding Company Act and thus is exempt from the requirements of the HSR Act under Section 7A(c)(7).

Company B also owns Bank B2, a bank that is primarily engaged in issuing credit cards to Company B's customers. In particular, Bank B2 issues credit cards to (i) Bank B1's customers, (ii) Company B's U.S. wealth management customers, and (iii) customers of Company B's foreign bank subsidiaries who own homes in the U.S. (the "cross-border customers").

Simultaneously with the closing of the Bank Stock Purchase discussed above, Company A's bank subsidiary, Bank A, will acquire from Bank B2 the portion of Bank B2's portfolio of credit card receivables that relates to Bank B1's customers. The credit card receivables to be acquired have a net book value of \$179.1 million and the consideration that Bank A is paying for these receivables is equal to net book value less an allowance for loan losses of approximately \$14 million – or approximately \$165 million. Bank B2 will retain the credit card accounts and receivables relating to Company B's other customers (i.e., the U.S. wealth management customers and the cross-border customers), which together represent approximately 16% of its current credit card business.

Bank A is currently engaged in the ordinary course of business in issuing credit cards to Company A's customers. Bank B2 is retaining a sizable portfolio of credit card accounts and it is not exiting the business of issuing credit cards. Indeed, after consummation of the proposed transaction, Bank B2 will continue to issue credit cards to Company B's wealth management and cross-border customers. Nor is there any non-compete provision in the credit card portfolio purchase agreement that prevents Company B and Bank B2 from expanding their retained U.S. credit card operations.

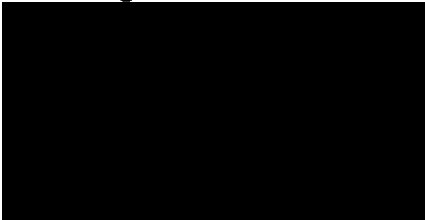
Based on prior PNO informal interpretations of the "ordinary course of business" exemption in connection with the acquisition of financial assets like receivables and loans, we believe that the acquisition of the credit card portfolio qualifies as an acquisition of credit card receivables in the ordinary course of business. In particular, we rely on Interpretation #7 of the Premerger Notification Practice Manual (ABA Premerger Notification Practice Manual, 4th Ed., at 11), which indicates that

the exemption is available as long as the seller "is not exiting the business altogether." Similarly, in an April 6, 2005 interpretation, the PNO advised that a transaction involving the purchase of virtually all the receivables held by a company was exempt under the ordinary course of business exemption since the seller would continue to operate and generate receivables (see <http://www.ftc.gov/bc/hsr/informal/opinions/0503027.htm>). Also, in a February 10, 2009 interpretation, the PNO advised that a transaction involving the purchase of all or substantially all of the credit card accounts held by the seller was exempt under the ordinary course of business exemption (see <http://www.ftc.gov/bc/hsr/informal/opinions/0902004.htm>).

For the foregoing reasons, we believe that the proposed purchase of a credit card portfolio qualifies for the ordinary course of business exemption from the requirements of the HSR Act, pursuant to Section 7A(c)(1) and 16 CFR 802.1(a).

We would appreciate your confirmation that the exemption applies to the proposed transaction. If you have any questions or would like to discuss this matter, please do not hesitate to contact me.

Best regards,



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Thank you in advance for your cooperation and assistance.

