

[REDACTED]

[REDACTED]

VIA FEDERAL EXPRESS

[REDACTED]

February 12, 1991

Victor L. Cohen, Esq.
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 310
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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NOTICE OF RECEIPT

Dear Mr. Cohen:

The purpose of this letter is to confirm our telephone conversation yesterday in which [REDACTED] and I requested your advice as to whether a transaction under consideration by our respective clients is subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"). The transaction satisfies the size-of-persons and size-of-transaction tests established in the Act and would be otherwise reportable unless there is an applicable exemption in the Act or the premerger regulations. Based on our description, you advised us that the proposed transaction is exempt as an acquisition of assets "in the ordinary course of business."

The transaction in question involves the sale of certain assets that are the subject of lease financing agreements. The buyer [REDACTED] (client) is a large financial institution that, among other activities, originates lease financings and regularly buys and sells assets that are subject to finance leases. The buyer does not compete with the companies that presently lease and use the assets that are the subject of the transaction.

This transaction involves leased assets owned by two (2) special purpose corporations (the "Sellers") which Sellers are, in turn, wholly owned by a common corporate parent (the "Parent"). The Parent is a leasing corporation that regularly buys and sells



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leased assets and residual interests in leased assets through special purpose corporations. The Parent and the Sellers are our clients.

The Sellers were created (in one instance) or acquired (in another) by the Parent in order to acquire particular portfolios of leased assets. They are not operating companies and have none of the indicia of operating companies (e.g., they have no employees, occupy no office space and conduct no business other than own and attempt to sell the leased assets). Such special purpose corporations are commonly created in the lease financing industry as vehicles to acquire, hold and sell leased assets if and when favorable market conditions exist. The current transaction involves the sale of the three (3) remaining leased assets of one of the Sellers (the other leased assets of the Seller having already been sold) and approximately 30% of the assets owned by the other Seller. In all, interests in ten (10) different leased assets are being sold. In some cases, the Sellers own a 100% interest in the leased assets and in others they own less than a 100% interest. In each case, the lessee of the leased asset will remain in possession of and continue to use the underlying asset. The Parent intends to remain in the leasing business subsequent to this transaction and, depending upon market conditions, will continue to buy and sell leased assets and residual interests in leased assets through special purpose corporations.

Section 7A(c)(1) of the Act exempts acquisitions of assets in the ordinary course of business. You have advised [redacted] and me that this exemption extends to transactions involving the sale of assets subject to financing leases if the following conditions are met: (1) the assets are subject to a bona fide financial lease; (2) while title to the leased assets will pass to the buyer, control of the assets will remain with the existing lessee; (3) the assets must be subject to a long-term lease or to a lease renewable at the lessee's option; (4) the acquiring person (i.e., the new lessor), does not compete with the existing lessee and (5) the seller (or in this case the Parent) is not exiting the leasing business, but intends to continue in its leasing activities. Accordingly, the transaction described above is exempt from the reporting and

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waiting period requirements of the Act.

Please call me if you have any questions or if the above does not accurately reflect your advice.

Very truly yours,

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[REDACTED]
[REDACTED]