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[redacted]

August 7, 1991

DELIVERED BY HAND

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Mr. Richard B. Smith
The Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
Washington, D.C. 20580

Re: Exemption Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976

Dear Mr. Smith:

In accordance with our telephone conversation on August 6, 1991, we are writing to confirm the staff's oral advice, based on information furnished by us to the staff during that conversation, that the transaction described below (the "Transaction") would be exempt from the premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act").

Credit Card Program of Bank A. Our client, Bank A, is a federally-chartered, FDIC-insured stock savings bank with total assets of approximately $5 billion at June 30, 1991. Bank A maintains a nationwide VISA and MasterCard credit card program with approximately 1.0 million accounts and total receivables (consisting of account balances, finance charges and other charges), including receivables transferred to credit card trusts serviced by Bank A, of approximately $2.1 billion as of June 30, 1991. Through its credit card program, Bank A offers both standard and premium ("gold") credit card accounts.

According to published figures, there are over 260 million VISA and MasterCard credit card accounts in circulation nationally.

Proposed Transaction. Bank A proposes to sell to Bank B approximately 130,000 VISA and MasterCard credit card accounts with total receivables of approximately $295 million at the time of sale (the "Accounts to be Sold"). The Transaction represents

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the sale of approximately 13% of Bank A's national portfolio of credit card accounts, as measured by number of accounts at June 30, 1991, and 14% of Bank A's national portfolio, as measured by receivables outstanding at June 30, 1991. The Accounts to be Sold will include both standard and premium credit card accounts with cardholders in 21 Midwestern and Western states (the "Sale Portfolio States"). The Accounts to be Sold will be selected from a qualifying pool of accounts meeting specified credit and other criteria.

The Accounts to be Sold constitute 57% of Bank A's portfolio in the Sale Portfolio States, as measured both by the number of accounts and by receivables outstanding at June 30, 1991. Therefore, following consummation of the Transaction, Bank A will retain accounts constituting 43% of its portfolio in the Sale Portfolio States. Bank A does not consider its credit card operations in the Sale Portfolio States to be a specific division of its credit card business or such operations to constitute a business separate from the rest of its credit card business.

Following the Transaction, Bank A will continue to manage its credit card accounts in the Sale Portfolio States which are not sold to Bank B. Bank A has not solicited new accounts in the Sale Portfolio States within the past nine months and has no current plans to solicit new accounts in the Sale Portfolio States in the future. Bank's current operating strategy is to accept new credit card accounts only in its core marketing area in which it conducts deposit-taking activities. Bank A will covenant in its purchase agreement with Bank B not to solicit new credit card accounts or other unsecured revolving credit accounts in nine of the 21 Sale Portfolio States for a period of three years after consummation of the Transaction. The Accounts to be Sold originated in the nine states constitute 48% of Bank A's portfolio in those states, as measured both by the number of accounts and by receivables outstanding at June 30, 1991. Therefore, following consummation of the Transaction, Bank A will retain accounts constituting 52% of its portfolio in the nine states.

<u>Prior Transactions</u>. In letters to the staff dated August 17, 1989, May 11, 1990, and August 20, 1990, we described three prior account sales by Bank A involving a cross-section of Bank A's national portfolio. The 1989 transaction and one of the 1990 transactions involved sales by Bank A of credit card accounts with outstanding receivables balances of approximately $200

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million and $186 million, respectively, to the same institution. The other 1990 transaction involved the sale by Bank A to a different buyer of accounts with total receivables of approximately $460 million at the time of sale. Bank B was not the purchaser of the accounts in any of these transactions.

<u>Discussion</u>. Based on the foregoing, we believe that the Transaction does not represent the sale of a "business" or of "substantially all of the assets of . . . an operating division" of a business within the meaning of 16 C.F.R. § 802.1(b). We believe the Transaction constitutes a transfer of assets "in the ordinary course of business" and therefore is exempt under Section 7A(c)(1) of the Act from the premerger notification requirements under the Act.

We understand from our telephone conversation with the staff on August 6, 1991 that, based on the facts of the Transaction as set forth in this letter, the staff concurs with the foregoing interpretation of the Act. Unless we receive a contrary indication from the staff following its receipt of this letter, we will so advise Bank A.

As discussed with the staff, a closing of the Transaction is currently scheduled for August 27, 1991. Therefore, we would appreciate receiving any further comments by the staff not later than next week.

If you have any questions regarding this matter or need any additional information, please do not hesitate to telephone the undersigned at [redacted]

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8/13/91 - John Sipple says no filing required but questions raised are somewhat difficult. However, since Bank A is not selling all, or substantially all, of its credit card accounts in a given geographic area, it has been the position of the PMN Office that no filing is required. The fact that it has decided not to solicit new accounts in the 21 state area (and has contracted with the buyer not to do so in nine states) raises interesting issues but these facts are not sufficient for us to change our position on reportability of such transactions at this time. I so advised [redacted] RBSmith