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September 26, 1991

**Certified Mail
Return Receipt Requested**

This material may be subject to the confidentiality provision of Section 7A (h) of the Clayton Act which restricts release under the Freedom of Information Act

William I. Schechter, Esquire
Senior Attorney
Premerger Notification Office
Bureau of Competition, Room 303
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

SEP 28 1 57 PM '91
MAIL ROOM

**Re: Formal and Informal Interpretations of Requirements
Under the Hart-Scott-Rodino Antitrust Improvements
Act of 1976 (the "Act")
(Public Law 94-435, 15 U.S.C. §18a, as amended)**

Dear Mr. Schechter:

[Redacted] is a [Redacted] chartered capital stock savings bank, the deposits of which are insured by the Federal Deposit Insurance Corporation. [Redacted] anticipates that within the next 30 days, it will enter into a binding contract with another banking institution chartered by a state of the United States, a bank holding company, or a national bank or other federally chartered bank (whichever, the "Purchaser") for the sale of certain assets of [Redacted] (the "Asset Purchase Agreement").

Parties to Transaction

For purposes of this letter, please assume that [Redacted] is engaged in activities affecting commerce. [Redacted] has assets, as of June 30, 1991, of approximately [Redacted] billion. Each of the prospective buyers of the assets who might become the "Purchaser" has total assets as of June 30, 1991, in excess of \$10 million.

[Redacted] which has numerous operating subsidiaries, is the sole first tier subsidiary of [Redacted], a mutual-form bank holding company that, as of June 30, 1991, holds [Redacted] of the issued and outstanding shares of common stock of [Redacted]. The remaining [Redacted] of the issued and outstanding shares of common stock of [Redacted] is publicly held. Except for [Redacted] no person or group is known by [Redacted] to be the beneficial

[Redacted]

owner of more than 5% of the common stock of [REDACTED]. As a result of the acquisition, the Purchaser will acquire an aggregate of more than \$15 million of the assets of [REDACTED].

Transaction Description

The assets [REDACTED] will be selling pursuant to the Asset Purchase Agreement will consist of a portion of [REDACTED] portfolio of credit card accounts and their related receivables. [REDACTED] entire portfolio of credit card accounts consists of approximately [REDACTED] VISA® and MasterCard® credit card accounts, having approximately [REDACTED] million in receivables outstanding as of July 31, 1991 (the "Bank's Portfolio"). The Bank's Portfolio can be divided into accounts with billing addresses outside the State of [REDACTED] (the "National Accounts") and accounts with billing addresses within the State of [REDACTED] (the "Accounts"). The accounts [REDACTED] plans to sell will consist of approximately [REDACTED] million to [REDACTED] million in value of VISA and MasterCard National Accounts and their related receivables, based on [REDACTED] most recent evaluation as of July 31, 1991 (the "Accounts to be Sold"). [REDACTED] anticipates that the Accounts to be Sold will represent approximately [REDACTED] to [REDACTED] in value of the Bank's Portfolio. [REDACTED] is not offering for sale any of its [REDACTED] Accounts.

In sum, [REDACTED] is retaining over [REDACTED] of its total portfolio of National Accounts and [REDACTED] of its [REDACTED] Accounts. The accounts [REDACTED] is retaining have addresses in all 50 states of the United States and are comprised both of Classic VISA and Standard MasterCard National Accounts (collectively, "Standard Accounts") and VISA Gold Card and MasterCard Gold Card Accounts (collectively, "Gold Accounts"). The distinction between Gold Accounts and Standard Accounts primarily concerns the benefits available to the cardholder under the different classifications of accounts. For a higher annual fee of \$40 [REDACTED] currently charges an annual fee of \$25 on its Standard Accounts), the holder of a Gold Account is entitled to emergency travel assistance, purchase protection, extended warranties and auto rental insurance. From [REDACTED] perspective, however, Gold Accounts are very similar to Standard Accounts. Except for the annual fee difference described above, Gold Accounts and Standard Accounts have identical fees and payment terms.

Analyzing the Accounts to be Sold like any other pool of loans, the yield on the Gold Accounts due to the higher annual fee is greater than the yield on the Standard Accounts, but the pools are otherwise indistinguishable. In addition, [REDACTED] has an identical work force for managing both Standard Accounts and Gold Accounts. [REDACTED] offers the same telephone numbers for inquiries and applications for both Standard Accounts and Gold Accounts. From an operations standpoint at [REDACTED] no distinction exists between Gold Accounts and Standard Accounts.

[REDACTED]

Because of the similarity in the pools, we feel that the significant factors to be viewed in analyzing the contemplated asset purchase are (i) the percentage of the total value of People's total credit card accounts that [REDACTED] is selling [REDACTED]; and (ii) the fact that [REDACTED] is retaining credit card accounts in each state. Both before and after the transaction is consummated, [REDACTED] will continue to retain both Standard Cards and Gold Cards in all 50 states of the United States.

Applicable Statutes and Regulations

Because [REDACTED] has maintained, and plans to maintain, an ongoing portfolio of Accounts, [REDACTED] feels that the [REDACTED] million to [REDACTED] million asset sale should be exempt from the premerger notification provisions of the Act pursuant to 15 U.S.C. §18a(c)(1) or §18a(c)(12) and the regulations promulgated thereunder.

Under Section 18a(c)(1), "The following classes of transactions are exempt from the requirements of this section -- (1) acquisitions of goods or realty transferred in the ordinary course of business". Section 18a(c)(12) exempts from the requirements of Section 18a "such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B)", which empowers the Federal Trade Commission (the "FTC") to promulgate rules to:

"(A) define the terms used in this section; (B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and (C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section 15 U.S.C. §18a(d)(2)".

The FTC staff is empowered pursuant to 16 C.F.R. §803.30(a) to consider "requests for formal or informal interpretations as to the obligations under the act and these rules of any party to an acquisition."

Pursuant to Section 802.1(b) of the regulations promulgated by the FTC under the Act: "No acquisition of the goods or realty of an entity ... shall be made 'in the ordinary course of business' within the meaning of Section 7A(c)(1) [15 U.S.C. §18a(c)(1)], if, as a result thereof, the acquiring person will hold all or substantially all of the assets of that entity or an operating division thereof."

As the statutes and the only applicable rule interpreting the "ordinary course of business" exemption imply, the sale of an entire operating division is considered to be within the intended scope of the Act. [REDACTED] has demonstrated that it is not

[REDACTED]

selling an entire division -- the [REDACTED] credit card department -- but only a portion of the portfolio of assets managed by that division. In fact, [REDACTED] is retaining over [REDACTED] in value, of the credit card assets and receivables managed by the [REDACTED] credit card department. [REDACTED] does not anticipate selling any equipment in connection with the transaction. After the sale of the Accounts to be Sold is consummated pursuant to the Asset Purchase Agreement, [REDACTED] will continue to have credit card accounts in all 50 states, will remain a party to ongoing affinity and agent bank agreements, and may in the future enter into additional affinity agreements and engage in direct mail and other forms of credit card account solicitations. [REDACTED] actively continues to solicit credit card accounts, and [REDACTED] continues to manage credit card accounts both in Connecticut and throughout the United States. [REDACTED] is currently accepting applications for credit cards and has an 800 number for receiving requests from anywhere in the United States for applications. We have therefore concluded that the sale of only a portion of [REDACTED] nationwide portfolio of credit card accounts constitutes a transfer in the ordinary course of [REDACTED] business operations and is therefore exempt from the Act pursuant to 15 U.S.C. §18a(c)(1).

We request that you confirm our conclusion that the transaction described in this letter is exempt from the premerger notification and waiting periods required under 15 U.S.C. §18a pursuant to 15 U.S.C. §18a(c)(1) or §18a(c)(12).

Please acknowledge your receipt of this letter by file-stamping and returning the enclosed copy in the stamped, self-addressed envelope provided.

If you require any additional information or have any questions regarding the facts or legal issues presented in this letter, please contact [REDACTED] of our counsel, [REDACTED] at [REDACTED] or me, at [REDACTED]. Should you disagree with or have any questions concerning the conclusions reached in this letter, we would appreciate having the opportunity to respond to your concerns before you issue any formal response.

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]