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May 29, 1992

VIA FACSIMILE (202-326-2050)

Hy Rubenstein
Federal Trade Commission
6th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20580

This document contains information which is confidentially transmitted under 7A (b) of the Copyright Act and restricts release under the Freedom of Information Act.

Re: Exemption From Hart-Scott-Rodino

Dear Mr. Rubenstein:

As we discussed in our telephone conversation on Tuesday, this law firm is representing a bank (hereinafter referred to as the "Bank") in the disposition of an asset (the "Asset"). This letter is to request interpretive advice regarding whether an exemption from filing under the Hart-Scott-Rodino Act is available under the following facts:

1. The Buyer and Seller each exceed the total asset thresholds under 15 U.S.C. § 18(a) and the Asset being sold is in excess of \$15,000,000.

2. The management and disposition of the Asset is subject to an Assistance Agreement by and between The Resolution Trust Company ("RTC"), as successor to the Federal Savings and Loan Insurance Corporation ("FSLIC"), and the Bank (the "Assistance Agreement").

The Asset, along with other assets, was acquired by the Bank from the FSLIC, as receiver, in a transaction which was conditioned upon the parties thereto entering into the Assistance Agreement. Pursuant to the Assistance Agreement, the Bank is indemnified by the RTC against loss upon disposition of the Asset and is entitled to certain payments and reimbursement of certain expenses associated with the Asset, provided the Bank fully complies with the Assistance Agreement.

Pursuant to the Assistance Agreement, the RTC must approve and consent to the Bank's plan of operation and

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disposition of the Asset and if the Bank fails to obtain such approval and consent, the Bank is subject to forfeiture of certain amounts it would otherwise be entitled to under the Assistance Agreement with respect to the Asset. In addition, the RTC may, at any time, subject to the terms of the Assistance Agreement, require the Bank to sell the Asset to any person designated by the RTC at fair market value.

Under the Assistance Agreement, the Bank is required to obtain the RTC's written approval, annually, with respect to its business plan for the Asset (which includes management, operation and disposition of the Asset) and its budget, updated quarterly, of anticipated income and expenditures related to the Asset. All material variances from the Bank's plan and budget must also be approved by the RTC. In addition, if the Bank proposes to dispose of the Asset, it must submit the terms of the purchase contract to the RTC for written approval. The failure to obtain the RTC's written approval with respect to any of the above documents could result in the Bank's forfeiture of certain payments it would otherwise be entitled to from the RTC with respect to the Asset.

In Interpretive Letter No. 29 ("Letter No. 29") issued by the ~~Federal Trade Commission ("FTC")~~, ^{The ABA} the ^{staff} FTC has applied the § 7A(c)(4) exemption to all sales ordered, approved and supervised by the RTC and the FDIC, even if not transferred directly from the agency. The letter addresses the situation where the RTC or FDIC acts as conservator.

A sale of the Asset by the Bank should also be exempt under § 7A(c)(4) due to the control exerted by the RTC under the approval process prescribed by the Assistance Agreement and the financial risk retained by the RTC pursuant to its obligations under the Assistance Agreement. Although the RTC has not technically "ordered or supervised" the sale of the Asset, it has controlled the sale of the Asset through the approval process prescribed by the Assistance Agreement and is subject to risk of loss until the Asset is disposed of and bears the liability of any loss resulting from the sale of the Asset.

We would appreciate receiving a response regarding your interpretation of the applicability of the § 7A(c)(4) exemption to the sale of the Asset as soon as reasonably possible so that the disposition of the Asset may proceed expeditiously.

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Please contact the undersigned at [REDACTED] if you
have any questions or need additional information.

Very truly yours,
[REDACTED]
[REDACTED]
[REDACTED]

Called and left message:
Not (4); the asset
has left the RTC and
the Bank can sell it without
RTC approval if it wants to.
Bank must file.

RS agrees.