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7A(c)(1)  
802.1  
7A(c)(2)

[Redacted]

[Redacted]

November 27, 1992

Nancy Ovuka  
Federal Trade Commission  
Room 303  
Sixth Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

NOV 30 10 28 AM '92  
FEDERAL TRADE COMMISSION  
PREMIER CENTER BUILDING  
WASHINGTON, DC 20540

Re: Request for Informal Opinion

Dear Ms. Ovuka:

This is a follow-up to my phone conversation of today regarding a fact situation and the applicability of the Hart Scott Rodino filing requirements to that fact situation. You asked that I provide you with a letter requesting an informal opinion. The purpose of this letter is to request that opinion.

**Facts**

My client is an operating subsidiary of a national bank engaged in equipment leasing activities. It proposes to purchase approximately \$42 million in leases including title to the underlying leased equipment from the leasing subsidiary of a foreign bank. The foreign bank's leasing subsidiary is in the process of downsizing its operations. My client is interested in hiring 12 of the foreign bank subsidiary's personnel, and in doing so also wants to acquire the \$42 million in leases. The personnel hired by my client would operate offices located in [Redacted].

*loan origination, not lease financing*

My client is in the business of buying and selling leases together with the underlying property as well as lease originations. The \$42 million dollars of leases and leased property in the proposed transaction would represent less than 10% of the assets of the foreign bank leasing subsidiary. The foreign bank leasing subsidiary would continue to operate. No voting securities or other securities would be involved in the transaction, only leases and leased equipment. Although the underlying assets are included, the leases involved are full pay-out leases in that

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the property leased would have little, if any, residual value at the end of the lease term.

**Discussion**

The Hart Scott Rodino Act generally exempts from the filing requirements acquisitions of goods or realty transferred in the ordinary course of business and acquisitions of bonds, mortgages, deeds and trusts or other obligations which are not voting securities. Section 7A(c)(1) and (2).

In this case, the purchaser is engaged in the business of purchasing and selling leases in the ordinary course of business including the purchase and sale of the property leased. The phrase "ordinary course of business" is not defined in either the act or the regulations.

Regulations to the Hart-Scott-Rodino Act, at Section 802.1, provide that if as a result of an acquisition, the acquiring person will hold all or substantially all of the assets of the other entity or an operating division thereof, the acquisition would not be in the ordinary course of business. In this case, my client would not purchase or hold all or substantially all of the assets of an entity or any of its operating divisions, nor would it purchase any voting securities. Rather, a company engaged in the ordinary course of business in the purchase of equipment/leases including the underlying equipment would be purchasing leases and equipment.

The leases themselves could be viewed as "other obligations" and therefore within the exemption set forth in Section 7(A)(c)(2), of bonds, mortgages, deeds and deeds of trust or other obligations which are not voting securities.

As we view the fact situation, the Hartz Scott Rodino notification should not be required because the transaction would be exempt under Section 7(A)(c)(1) and Section 7(A)(C)(2) of the Clayton Act.

We trust that you will concur with our position.

I would appreciate it if you could review the matter and respond on Monday, November 30, 1992, if possible. We are trying to facilitate a closing before year-end. If a filing is necessary, we must commence the process immediately.

*"of goods or realty"*

*purchase of used  
devalued goods not  
exempt*

*no!*

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Please call me at [REDACTED] with your response or if you have any questions.

Sincerely,

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11/30/92

Called [REDACTED]. Transaction is not exempt. This is not a lease financing arrangement under 7A(c)(1) or § 802.1(b). PS x RS correct.