802.1
c-1

[redacted]

February 14, 1996

Patrick Sharpe
Compliance Specialist
Pre-Merger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street and Pennsylvania Avenue
Washington, DC 20500

Dear Mr. Sharpe:

This letter is in confirmation of our discuss[redacted]today with [redacted] L.L.P., regarding the following described transaction and its qualification for an exemption from the H-S-R pre-merger notification requirements.

An industrial loan company proposes to sell its entire $52 million [redacted] loan portfolio to two different finance companies, one of which will be acquiring approximately $45 million of the loans.[1] The seller, which has approximately $600 million in assets, is a state chartered financial institution that engages in the business of banking and has its deposits insured by the Federal Deposit Insurance Corporation. The buyer of the larger portion is a multi-billion dollar financial services company which engages in various forms of lending. The seller, for various business reasons, has decided to discontinue this portion of its lending business and sell it[redacted]loan portfolio. It will continue to originate commercial loans, consumer loans, real estate loans and other types of loans authorized for an industrial loan company.

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[1] Following our conversation, further discussion with the parties clarified certain aspects of the transaction (i.e., the size of the parties, the size of the portfolio, and the number of purchasers).

FTC Office

As we understand from our discussion, the sale of the larger portion will qualify for the exemption from the pre-merger notification requirement, set forth in 12 U.S.C. § 18a(c)(1), as one effected in the ordinary course of business because the seller will remain in the lending business following the sale of this particular type of loan portfolio.[2] Based upon the FTC's position, the parties will proceed to consummate the transaction without making the H-S-R filing.

We would appreciate your confirming our understanding as set forth in this letter, as indicated, and returning it to me by telecopy. If you have any questions, please do not hesitate to contact me. Thank you again for your assistance.

Very truly yours,

[redacted]

cc: [redacted]

called [redacted]
2/15/96
2/20/96 This is exempt in the ordinary course of business. BS

BS - concurs

Confirmed:

_____
Patrick Sharpe
Compliance Specialist

[2] Even if the smaller portion is aggregated with the larger portion for the H-S-R analysis, it should likewise qualify for the exemption.

trary to the producing assets analysis. Many "real estate" assets that produce an income stream, such as hotels and shopping centers, are leased to third parties. The sale of such assets is *not* exempt. The staff has also identified certain types of assets that, although revenue producing, will always be treated as exempt realty; these are office buildings and residential buildings.

23 **Applicable subsections of the Act and rules.** § 7A(c)(1), § 802.1(b).

Brief statement of the question or problem. Is the acquisition by Bank A of certain credit card receivables of Bank B exempt under § 7A(c)(1) when the receivables comprise all of Bank B's business in a particular state but not all of its assets and not even all of its credit card receivables?

Interpretation and discussion. No. The FTC staff determined that sale of all of Bank B's business in a particular state is analogous to selling an operating division and therefore is not exempt under § 802.1(b).

Documents pertaining to this issue. Letter to Joe Price, dated February 25, 1987.

Commentary. Accounts receivable are considered assets for the purpose of the Act. See *Formal Interpretation Under 16 C.F.R. § 803.30, The Treatment of Accounts Receivable Under § 801.21* (Mar. 20, 1980).

Whether or not a group of assets constitutes an "operating division" is partially determined by the way in which an entity has structured itself. For example, if a bank were to sell its home improvement loan portfolio, but retained its boat loan and car loan portfolios and the same bank personnel were responsible for handling all of the loans as part of a consumer loan division, the sale of the home improvement loan portfolio might be exempt as a sale in the ordinary course of business. However, if the bank had so organized itself that each type of loan was in a separate division, then the sale of the home improvement loans would not be in the ordinary course, but would be the sale of substantially all of the assets of an operating division. The 1985 Proposed Rules (50 Fed. Reg. 38,742) provided examples of collections of assets that might be deemed operating divisions: regional or branch units, international units, financial units, service units, transportation units, factories, mines, oil wells, hotels and shopping malls. *See also* Int. #20.

24 **Applicable subsections of the Act and rules.** § 7A(c)(1), §§ 802.1(b), 801.15

Brief statement of the question or problem. Is the acquisition from a single seller, under a single agreement, of separate parcels of undeveloped real estate and other nonrealty assets the aggregate value of which exceeds $15 million subject to the Act?