Assets being sold do not constitute a separate division or operating [redacted] unit. Bank continues [redacted] credit cards w/ retailers name & uses bank personnel to collect amounts due.

802.1(e)
7a(c),

[redacted]

SCOTT P. PERLMAN
COUNSEL
202-778-0606

RS agrees

October 24, 1996

VIA FACSIMILE

Victor Cohen, Esquire
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Acquisition of Private Label Credit Card Portfolio

Dear Mr. Cohen:

I am writing to confirm our telephone conversation of Friday, October 18, 1996, in which you informed me, after conferring with Richard Smith of your office, that the following transaction is exempt from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act" or the "Act"), and the rules promulgated thereunder, 16 C.F.R. § 801 et seq. (the "Rules").

Bank A has proposed acquiring the private label credit card portfolio of Bank B for $100 million. The private label cards at issue are cards issued by Bank B on behalf of retail stores. The name of the particular store or retail chain for which the card is issued appears on the face of the card, and the card can be used only at that particular store or chain. The cards are useful marketing tools for the stores, which use the monthly billing statements as a vehicle for providing advertising information to customers; the stores also can use purchase information generated by the cards in developing marketing strategies. Bank B has a separate sales and marketing group for its private label portfolio, but many of the support functions for the portfolio, including finance and collections, are performed by Bank B's general departments. Bank B does not regard its private label operations as constituting a separate division or operating unit.

As part of the proposed acquisition, Bank A will acquire Bank B's private label accounts, and likely will take on some of the employees who have been working with Bank B's private label card

[redacted]

[redacted]

portfolio. After the acquisition, Bank B will continue to issue other credit cards, including MasterCard and Visa cards and co-branded cards that feature the names of retailers, but that also are Visa or MasterCard credit cards. Unlike the private label cards, these co-branded cards can be used at any location that accepts Visa or MasterCard cards. They also tend to have lower interest rates than private label cards. Further, while a co-branded card can be used as a marketing vehicle by a retailer, it is not as helpful as a private label card with respect to providing information on customer purchases. If Bank B wanted to start a new private label portfolio after this transaction, it would have to hire new personnel that have experience with private label cards.

The proposed acquisition meets both the Size-of-the-Persons and the Size-of-the-Transaction thresholds. The issue raised by the transaction is whether it is exempt as an acquisition of goods or realty in the ordinary course of business under Section 7A(c)(1) of the Act. Under this exemption, the sale by a bank of credit card receivables is exempt so long as these receivables do not constitute an operating unit or the bank exiting a line of commerce. See ABA Premerger Notification Practice Manual (1991 ed.), Interpretation No. 23.

In our discussion, you stated that even though Bank B was selling off all of a particular type of credit card account, because it would continue to issue credit cards, including co-branded cards featuring the names of particular retailers, it was not exiting a line of commerce or selling an operating unit for purposes of the Act. The ordinary course of business exemption therefore applies.

Please review this letter and call to let me know whether you agree with my understanding of our conversation. I look forward to hearing from you soon.

Sincerely,

[redacted]

[redacted]

[redacted]