

[REDACTED]

802.64(a)(7)

[REDACTED]

[REDACTED]

November 8, 1996

Richard B. Smith, Esq.  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
6th Street and Pennsylvania Avenue, N.W.  
Room 303  
Washington, D.C. 20580

Re: Definition of Finance Company for Purposes of § 802.64

Dear Dick:

I am writing to inquire about the Staff's position as to whether [REDACTED] is a finance company for purposes of determining the applicability of the institutional investor exemption set forth in 16 C.F.R. § 802.64.

As I explained during our telephone conversation on Monday, November 4, 1996, we believe that [REDACTED] is a finance company because a substantial portion of its business is financing, including debt financing, consumer financing, leasing and equity financing. For example, [REDACTED] often provides debt financing to third parties for acquisitions, working capital, project finance and construction, asset securitization, lease financing, including aircraft and other equipment, and equity financing. However, neither § 802.64 nor the Statement of Basis and Purpose explaining the institutional investor exemption provide any definition of a finance company. Similarly, the Premerger Notification Practice Manual provides no assistance on this issue.

[REDACTED]

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You informed me that you were unaware of any prior learning regarding the definition of a finance company, but stated that you did not believe that 100% of a finance company's business must be financing. You then agreed that [redacted] appears to be a finance company because of its financing activities and should be able to avail itself of the institutional investor exemption, assuming, of course, that other conditions of the exemption are met. However, you also stated that this was your opinion alone and suggested that I write this letter in order to obtain a more definitive answer.

Thus, I would be grateful if you would inform me of the Staff's position on this matter. Please call me if you have any further questions.

Thank you for your cooperation.

Very truly yours,

[redacted] 11/14/96 Advised writer that it was the view of the PMN office (PS, NO, TH and VC) that [redacted] can qualify as a "finance company" under 802.64(a)(7). I pointed out to the writer that in order to use 802.64 the (b)(3) requirement that the investment be made solely for investment purposes (as defined in 802.9) would apply to the acquiring person and not just the acquiring entity.

PR Smith

[redacted]