

802.1; 802.1(a)

April 22, 1998

BY TELECOPY TO (202) 326-2624
Confirmation No. (202) 326-2850

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

Re: HSR Exemption Issue

Dear Mr. Smith:

We represent a debtor in bankruptcy (the "Debtor") that is in the process of selling certain assets in the bankruptcy process. The assets consist of (i) a portfolio of consumer automobile loans and related security interests in automobiles (such type of loans and security interests collectively, "Auto Loans") having a face value of approximately \$80 million and an estimated fair market value of approximately \$50 million and (ii) the stock of a subsidiary of the Debtor (the "Debtor Sub"), which Debtor Sub has assets having an estimated fair market of approximately \$5 million and consisting of residual interests in Auto Loans and automobiles repossessed following defaults of Auto Loans.

Section 7A(c)(2) of the Act provides that "acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities" are exempt from the reporting requirements of the Act. To my knowledge, there is no statutory definition of "bonds, mortgages, deeds of trust, or other obligations which are not voting securities." However, there is a clear indication of what was intended by Congress to be exempt under Section 7A(c)(2).

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With respect to Section 7A(c)(2), Senator Hart stated that "It is the intention of the managers [of the Senate bill including the Act] that these provisions [Section 7A(c)(2)] exempt consumer receivables and loans or other obligations, which are not voting securities, which are traditional financing arrangements and which normally are sold to banks or other financing agencies." 122 Cong. Rec. S15,417 (daily ed. Sept. 8, 1976) (words in brackets supplied). The statement is quoted on page 6-22.31, note 3, of Axinn, Fogg, a copy of which is attached.

I believe that Auto Loans clearly are "consumer receivables and loans." I also believe that Auto Loans (i) are not voting securities, (ii) are "traditional financing arrangements" and (iii) are "normally sold to banks or other financing agencies." In addition, I believe that the acquisition of Auto Loans "pose no anticompetitive threat under Section 7", which was a stated reason by the House for the Section 7A(c) exemptions. See page 6-22.31, note 2, of Axinn, Fogg.

In view of the foregoing, I believe the proposed sale of Auto Loans by the Debtor should be exempt under Section 7A(c)(2). In addition, I believe the sale of the stock of the Debtor Sub should be exempt under § 802.4 in that Auto Loans are exempt assets and the non-exempt assets of the Debtor Sub do not exceed \$15 million.

You have always invited me to quote Senator Hart, and I have finally had a chance to do so. I would appreciate your informing me if my analysis is correct.

My direct telephone number is [REDACTED]. I will contact you today to confirm that you have received this letter. As always, I truly appreciate your assistance.

[REDACTED]

Attachment

4/23/98 - Advised writer that if seller existing business or selling an operating unit, a filing would be required. (See letter # 28 in ABA Practice Manual).

RBS Smith