

Michael Verne

7A(c)(1)

From: [REDACTED]
Sent: Saturday, November 23, 2002 8:28 PM
To: Michael Verne
Subject: Ordinary Course Exemption

Dear Mike,

This email confirms our conversation on Thursday, November 21. During our conversation you indicated that the "ordinary course" exemption in 16 CFR § 802.1 would apply to the following scenario:

A credit card issuing bank B is acquiring the credit card portfolio of target T. Bank B is acquiring the books and records of T's business, including cardholder agreements, files and lists, as well as inventories, supplies and other goods maintained by T in connection with the credit card accounts. However, while T will probably not retain any of its present credit card accounts, except possibly for certain non-performing accounts, T will retain all of its employees (though they may be reassigned or terminated), furniture, fixtures and equipment used in connection with this business. For an interim period, T will also continue to service its customers. After the transaction, T will not be able to issue its own credit card accounts after the transaction, but will be able to initiate "private label" credit card programs, though it does not currently do so. Both B and T will be able to seek new accounts for cards with T's name, with each company having the right to approve marketing materials developed by the other. Although any new accounts will belong to B, B will pay T a per account fee plus a percentage of the receivables, with a higher fee when the new account is the result of T's efforts.

When we talked, you indicated that T's ability to be involved with "private label" credit card programs and the continued general credit card activity described above meant that it was not exiting the business. As a result, the "operating unit" exception to the exemption for acquisitions in the "ordinary course" would not apply, and the transaction would be exempt under 16 CFR § 802.1.

Please let me know as soon as possible if I have misunderstood our conversation. I can be reached at [REDACTED]

Thank you,

[REDACTED] tz

AGREE -
B. Michael Verne
11/25/02

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