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ATTORNEYS AT LAW

[REDACTED]

[REDACTED]

[REDACTED]

April 5, 2004

Writer [REDACTED]

Mr. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street and Pennsylvania Avenue, N.W.
Room 301
Washington, DC 20582

Re: Ordinary Course Exemption

Dear Mr. Verne:

This letter is to confirm the substance of our telephone conversation of April 1, 2004, regarding the applicability of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), to the proposed transaction outlined below. I was joined on the call by [REDACTED] of [REDACTED] representing the acquired person. As you will recall, given the facts of the transaction we concluded that filing of a Premerger Notification and Report Form will not be required in this case.

Terms of Transaction

Company "A" and Company "B" are discussing a possible transaction whereby Company A will acquire certain assets of Company B. Company A and Company B are each publicly traded corporations and each satisfy the HSR Act size of person threshold. The anticipated value of the assets to be acquired is greater than \$50 million. The HSR Act issue presented is whether the transaction is exempt from the HSR Act filing requirements pursuant to the ordinary course exemption set forth in § 802.1 of the HSR Act regulations.

Each of Company A and Company B are in the equipment rental and leasing business. Company A intends to acquire substantially all of the assets of a division of Company B, consisting of, inter alia, all equipment inventory, income stream, information systems and name/trademarks (the "Acquired Assets"), as well as taking on existing personnel and facilities obligations, and the assumption of the liabilities and

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obligations related to the Acquired Assets and the existing contractual obligations, including vendor obligations, necessary for the day-to-day operations of the Acquired Assets.

The Acquired Assets consist primarily of used durable goods to be used by Company A solely for the purpose of leasing to third parties within the meaning of § 802.1(d)(1). Therefore, if the Acquired Assets do not constitute an "operating unit" of Company B, we believe that the acquisition would be exempt from the HSR Act reporting requirements as an acquisition in the ordinary course.

Company B Operations

In Company B's SEC filings and marketing materials, it describes its business activities as consisting of several operating groups, one of which is the "specialty finance group," within which are located the Acquired Assets. The Acquired Assets represent a very small portion (less than 10%) of the total assets of the specialty finance group of Company B.

The division of Company B holding the Acquired Assets engages in its own advertisements, including its own web page, and describes itself as an equipment rental and leasing "company" but is not separately incorporated. Its marketing material makes clear it is a division of Company B, and describes the division holding the Acquired Assets as one of several "business units" of the specialty finance group.

The vast majority (approximately 80%) of the equipment rental activities represented by the Acquired Assets consists of short term rentals, usually 6 months or less. Also, the Acquired Assets focus on rental activities in a specific industry. As part of the transaction, it is anticipated that the parties will enter into a non-compete agreement whereby Company B, for a specified period of time, shall not engage in "Short Term Rental" of the type of equipment included in the inventory of the Acquired Assets. For purposes of this non-compete, "Short Term Rental" is defined as the rental of certain equipment on a month-to-month basis, other than the rental of equipment that has been previously subject to a lease having a term of at least 6 months or greater.

Ordinary Course Exemption

An "operating unit" is defined in the HSR Act regulations as "assets that are operated by the acquired person as a business undertaking in a particular location or for particular products or services, even though those assets may not be organized as a separate legal entity." 16 C.F.R. § 802.1(a). As originally promulgated, the 802.1 exemption did not apply if the sale involved all of the assets of an "operating division."

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In the 1996 rulemaking amending the HSR Act regulations to replace "operating division" with the term "operating unit", the FTC sought to emphasize that the nature and substance of the activities conducted by a business unit are the only factors relevant in determining the applicability of the ordinary course exemption under § 802.1 of the HSR Act regulations. 61 Fed. Reg. 13,666, 13,670 (1996). Therefore, the sale of a division of a company does not necessarily mean that an operating unit will be sold.

HSR Analysis

We believe it is appropriate to apply the "operating unit" definition to the "operating groups" of Company B, one of which is the specialty finance group. This is how Company B describes its activities in SEC filings and reports its earnings. Looking at the nature and substance of the activities conducted by the Acquired Assets -- equipment rental and leasing -- the ordinary course exemption should apply because under the facts presented, Company B will continue in the equipment rental and lease business after the sale of the Acquired Assets.

Pursuant to the terms of the non-compete agreement, Company B would be precluded, for a specified period of time, from engaging in Short Term Rental (as defined above). This fact should not be relevant to the ordinary course exemption because Company B can engage in rental activities with respect to such equipment for terms of 6 months or longer, and can also provide month-to-month rentals for equipment that was previously subject to a lease having a term of 6 months or longer.

As we discussed, you agreed with our view that the proposed transaction does not include elements that would trigger a determination under § 802.1 of the HSR Act regulations that an operating unit is being sold. Accordingly, the ordinary course exemption is applicable and the transaction is not reportable under the HSR Act.

We appreciate your taking the time to discuss this transaction with us. Please let me know as soon as possible if the foregoing conclusions are not consistent with your understanding.

Sincerely,

cc:

AGREE -

B. Michael Verne

4/13/04