

Verne, B. Michael

7A(c)(1)

From: [REDACTED]
Sent: Friday, June 01, 2007 4:52 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Ordinary Course of Business Exemption

We seek confirmation that the proposed transaction described below is exempt from the notification and waiting period requirements of the HSR Act by virtue of Section 7A(c)(1) of the Act and Section 802.1 of the FTC Premerger Notification Rules, which cover transactions in the ordinary course of business (OCB Exemption). Pertinent facts are as follows:

1. Seller (which includes the ultimate parent entity and its controlled affiliates) is a diversified commercial lender that provides a variety of financing and equipment financing services throughout the United States and elsewhere. Seller's equipment financing subsidiary (the *Applicable Subsidiary*) proposes to sell substantially all of the assets associated with a business unit engaged in originating, marketing, purchasing, selling, and servicing equipment loans, leases, and other finance products for the construction industry, including its portfolio of financing contracts, loans, and equipment leases for that industry.
2. Seller, through the Applicable Subsidiary) provides similar services for customers in a variety of other industries, and will continue to do so following closing of the proposed transaction.

However, Seller will discontinue such services, at least during the term of a restrictive covenant currently being negotiated as part of the proposed transaction, (the *Restriction Period*) as a primary business for customers in the construction industry. It is possible that Seller may provide limited equipment loans, leases, and other financial products for the construction industry during the Restricted Period, but the restrictive covenants are anticipated to limit those activities to a minimal degree which would be incidental to Seller's continuing provision of financial services primarily focused on other industries. It is anticipated that any construction industry-related activities during the Restricted Period would represent a de minimus percentage of Seller's equipment financing assets and revenues. Any restrictions on Seller would cease at the end of the Restriction Period.

3. The assets to be sold comprise less than five percent of Seller's total loan/lease portfolio.
4. Purchaser is a diversified national lender that provides a wide range of commercial and consumer financial services.

5. Seller and Purchaser exceed the size of person tests, and the total purchase price for the transaction, stated as a cash premium over the net book value of the assets to be acquired, exceeds the minimum size of transaction threshold.

6. Purchaser will hire substantially all of Seller's staff (approximately 230 persons) who work in the business unit whose assets will be sold, but Seller will continue to employ many other staff who perform similar financing, lease financing, and servicing functions for Seller's commercial financing business units focused on other industries.

Based on the above statement of facts, the proposed transaction is covered by the OCB Exemption because Seller will continue to provide financing, lease financing, and loan servicing services for customers in a variety of industries following the sale of substantially all of its assets associated with Seller's business unit focused on the construction industry. We believe this is the case due to the nature of the loan/lease financing services that the Seller and its Applicable Subsidiary provide, even if in the context of other products or services the business unit in question might be characterized as an *operating unit* as that term is used in the OCB Exemption. See, e.g., ABA Section of Antitrust Law, Premerger Notification Practice Manual (4th ed. 2007), Interpretation 8; Informal interpretations 0411006, 0308001, and 0306007, published on FTC website, available at <http://www.ftc.gov/bc/hsr/informal/index.shtm>.

Please respond to all recipients of this email, or advise if you wish to discuss this matter and I will contact you by telephone with Mr. [REDACTED]

Best regards, [REDACTED]

FEDERAL TAX NOTICE:

Treasury Regulations require us to inform you that any federal tax advice contained herein (including in any attachments and enclosures) is not intended or written to be used, and cannot be used by any person or entity, for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service. In addition, we do not impose upon any person or entity to whom this is addressed any limitation on the disclosure of the tax treatment or tax structure of any transaction discussed herein (including in any attachments and enclosures).

I AGREE ALL OF THIS IS COVERED BY THE ORDINARY COURSE EXEMPTION.
[Signature]
6/4/07