

Verne, B. Michael

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From: [REDACTED]
Sent: Tuesday, October 27, 2009 1:59 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Ordinary Course and Credit Card Business Sale

Dear Mike, I hope all is well. We are writing to confirm the applicability of the "ordinary course" exemption under 15 USC 18a(c)(1) – 7A(c)(1) of the HSR Act to the facts presented below.

Facts Presented

Bank A is a US bank, engaged in a variety of financial and non-financial businesses, including the credit and charge card business. Bank A conducts its credit and charge card business through a number of subsidiaries and divisions. The acquiring party, Bank B, is also engaged in the business of issuing credit cards.

Bank A is contemplating a transaction in which it will sell a portion of its commercial credit and charge card portfolio and certain related assets. The portion being sold is operated under a specific brand (the "Card Brand"). Following the transaction, Bank A will, however, remain in the consumer and commercial credit card under other brands and charge card business and its business of issuing private label credit cards (i.e. cards that are merchant-specific) to both commercial customers and individuals.

The transaction will be effected pursuant to a purchase and sale agreement whereby the buyer, Bank B, will acquire (a) the accounts, receivables, cardholder lists, books and records, and other assets associated with the Card Brand and (b) the voting securities of a US entity ("Card Co.") whose only (material) assets are various contracts entered into in connection with the operation of the Card Brand. These include various agreements related to: (a) exchanging card "points" for rewards (such as frequent flyer miles, hotel stays, gifts, etc); (b) offering credit cardholders various benefits as card members (such as access to airport lounges, telephone services); (c) marketing services related to the Card Brand (such as trade show participation, advertising printing and distribution) and (d) a franchise agreement with the owner of the Card Brand allowing the Card Brand to be used on cards in North America and with a card association allowing the cards to be co-branded with the card association's brand.

We can assume for purposes of this analysis that the size of parties threshold is satisfied.

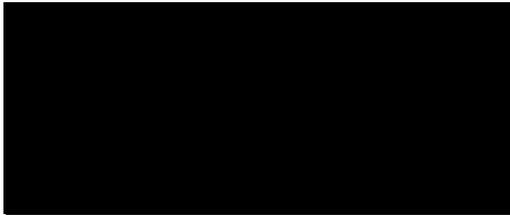
HSR Analysis

1. Asset Acquisition. Based on currently policy, we understand that the acquisition of the accounts, receivables, and related assets of the Card Brand by Bank B are exempt from HSR Act reporting under the ordinary course exemption given that Bank A will continue its consumer and commercial credit card and charge business and its business of issuing private label credit cards (i.e. cards that are merchant-specific) to both commercial customers and individuals. We understand that this exemption would apply even if Bank A will be prohibited, following the sale, from issuing cards under the specific Card Brand that is sold.

2. Card Co. Acquisition. As all of the contracts held by Card Co. are used by Bank A solely to service cardholders of the Card Brand accounts that are being acquired, we believe that these assets are also HSR exempt assets under the ordinary course exemption. Thus, pursuant to Section 802.4 of the HSR rules, the

acquisition of the Card Co. voting securities would also be exempt.

Thank you and best regards,



AGREE -
B
10/27/04

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