



March 22, 1984

FEDERAL EXPRESS

Mr. John Sipple
Bureau of Competition
Federal Trade Commission
Room 392
Pennsylvania and 7th Avenues, N.W.
Washington, D.C. 20580

RE: Premerger Notification Exemption

Dear Mr. Sipple:

This is to confirm our phone call of March 16. [REDACTED] a wholly-owned indirect subsidiary of [REDACTED] a bank holding company, plans to make a purchase of mobile home sales contracts. The purchase will be from [REDACTED] As of December, 1983, the Savings and Loan had total receivables in the amount of \$274 million.

[REDACTED] plans to purchase approximately 1,628 accounts for a net purchase price of \$22,085,739. The customers reside in Ohio, Pennsylvania, and West Virginia.

The Savings and Loan intends to cease financing mobile home sales. But, to our knowledge, they will use the proceeds to finance other types of credit transactions.

It is my understanding, based on our discussion, that this transaction will be exempt from the Hart-Scott-Rodino Premerger Notification filing. This is a purchase in the ordinary course of business of substantially less than all the assets of the selling company.

Please call me by March 29 if you have any further questions. We plan to close the transaction on or shortly after that date.

Very truly yours,

[REDACTED signature]

[REDACTED signature]

and has held the securities for at least two years, and the issuer is subject to the periodic reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934, has been so subject for at least the preceding 12 months, and has filed all of the reports required to be filed under those sections during the preceding 12 months. The person or party selling securities under this paragraph (d)(2) shall be entitled to rely upon a statement in whichever is the most recent report filed by the issuer that such issuer has filed all of the reports required to be filed under sections 13 or 15(d) of the Exchange Act during the preceding 12 months, unless such person or party has reason to believe that the issuer has not complied with such requirements.

(e) *Definition of "person."* The term "person" as used in paragraphs (c) and (d) of this section, when used with reference to a person for whose account securities are to be sold, shall have the same meaning as the definition of that term in paragraph (a)(2) of § 230.144.

(Secs. 2(1), 4(1), 19(a), 48 Stat. 74, 77, 85; sec. 209, 48 Stat. 906; secs. 1-4, 68 Stat. 683; sec. 12, 78 Stat. 580; sec. 308(a)(2), 90 Stat. 27, 15 U.S.C. 77b(1), 77d(1), 77(a)(1) [37 FR 21636, Nov. 7, 1972, as amended at 43 FR 21661, May 19, 1978].

§ 230.147 "Part of an Issue," "Person Resident," and "Doing Business Within" for purposes of section 3(a)(11).

PRELIMINARY NOTES

1 This rule shall not raise any presumption that the exemption provided by Section 3(a)(11) of the Act is not available for transactions by an issuer which do not satisfy all of the provisions of the rule.

2 Nothing in this rule obviates the need for compliance with any state law relating to the offer and sale of the securities.

3 Section 3 of the Act requires that all securities offered by the use of the mails or by any means or instruments of transportation or communication in interstate commerce be registered with the Commission. However, provided certain exemptions in the Act from such registration provisions where there was no practical need for registration or where the benefits of registration were too remote. Among those exemptions is that provided by Section 3(a)(11) of the Act for transactions in any security which is a part of an issue offered and sold only to

persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within such State or Territory. The legislative history of that Section suggests that the exemption was intended to apply only to issues genuinely local in character, which in reality represent local financing by local industries, carried out through local investment. Rule 147 is intended to provide more objective standards upon which responsible local businessmen intending to raise capital from local sources may rely in claiming the section 3(a)(11) exemption.

All of the terms and conditions of the rule must be satisfied in order for the rule to be available. These are: (i) That the issuer be a resident of and doing business within the state or territory in which all offers and sales are made, and (ii) that no part of the issue be offered or sold to non-residents within the period of time specified in the rule. For purposes of the rule the definition of "issuer" in section 2(14) of the Act shall apply.

All offers, offers to sell, offers for sale, and sales which are part of the same issue must meet all of the conditions of Rule 147 for the rule to be available. The determination whether offers, offers to sell, offers for sale and sales of securities are part of the same issue (i.e., are deemed to be "integrated") will continue to be a question of fact and will depend on the particular circumstances. See Securities Act of 1933 Release No. 4434 (December 6, 1961) (26 FR 9158). Securities Act Release No. 4434 indicated that in determining whether offers and sales should be regarded as part of the same issue and thus should be integrated any one or more of the following factors may be determinative:

(i) Are the offerings part of a single plan of financing.

(ii) Do the offerings involve issuance of the same class of securities.

(iii) Are the offerings made at or about the same time.

(iv) Is the same type of consideration to be received, and

(v) Are the offerings made for the same general purpose.

Subparagraph (b)(2) of the rule, however, is designed to provide certainty to the extent feasible by identifying certain types of offers and sales of securities which will be deemed not part of an issue, for purposes of the rule only.

Persons claiming the availability of the rule have the burden of proving that they have satisfied all of its provisions. However, the rule does not establish exclusive standards for complying with the Section 3(a)(11) exemption. The exemption would also be available if the issuer satisfied the standards set forth in relevant administrative and

other person is organized, or pursuant to provisions contained in its certificate of incorporation or similar controlling instruments, or otherwise, there is submitted for the vote or consent of such security holders a plan or agreement for—

(1) *Reclassifications.* A reclassification of securities of such corporation or other person, other than a stock split, reverse stock split, or change in par value, which involves the substitution of a security for another security;

(2) *Mergers or consolidations.* A statutory merger or consolidation or similar plan or acquisition in which securities of such corporation or other person held by such security holders will become or be exchanged for securities of any other person, except where the sole purpose of the transaction is to change an issuer's domicile; or

(3) *Transfers of assets.* A transfer of assets of such corporation or other person, to another person in consideration of the issuance of securities of such other person or any of its affiliates, if:

(i) Such plan or agreement provides for dissolution of the corporation or other person whose security holders are voting or consenting; or

(ii) Such plan or agreement provides for a pro rata or similar distribution of such securities to the security holders voting or consenting; or

(iii) The board of directors or similar representatives of such corporation or other person, adopts resolutions relative to paragraph (a)(3) (i) or (ii) of this section within 1 year after the taking of such vote or consent; or

(iv) The transfer of assets is a part of a preexisting plan for distribution of such securities, notwithstanding paragraph (a)(3) (i), (ii), or (iii) of this section.

(b) *Communications not deemed to be a "Prospectus" or "Offer to Sell."* For the purpose of this section, the term "prospectus" as defined in section 2(10) of the Act and the term "offer to sell" in section 3 of the Act shall not be deemed to include the following:

(1) Any written communication or other published statement which contains no more than the following in-

formation: The name of the issuer of the securities to be offered, or the person whose assets are to be sold in exchange for the securities to be offered, and the names of other parties to any transaction specified in paragraph (a) of this section, a brief description of the business of parties to such transaction; the date, time, and place of the meeting of security holders to vote on or consent to any such transaction specified in paragraph (a) of this section; a brief description of the transaction to be acted upon and the basis upon which such transaction will be made, and any legend or similar statement required by State or Federal law or administrative authority.

(2) Any written communication subject to and meeting the requirements of paragraph (a) of § 240.14a-12 of this chapter and filed in accordance with paragraph (b) of that section.

(c) *Persons and parties deemed to be underwriters.* For purposes of this section, any party to any transaction specified in paragraph (a) of this section, other than the issuer, or any person who is an affiliate of such party at the time any such transaction is submitted for vote or consent, who publicly offers or sells securities of the issuer acquired in connection with any such transaction, shall be deemed to be engaged in a distribution and therefore to be an underwriter thereof within the meaning of section 2(11) of the Act. The term "party" as used in this paragraph (c) shall mean the corporations, business entities, or other persons, other than the issuer, whose assets or capital structure are affected by the transactions specified in paragraph (a) of this section.

(d) *Resale provisions for persons and parties deemed underwriters.* Notwithstanding the provisions of paragraph (c), a person or party specified therein shall not be deemed to be engaged in a distribution and therefore not to be an underwriter of registered securities acquired in a transaction specified in paragraph (a) of this section if: (1) Such securities are sold by such person or party in accordance with the provisions of paragraphs (c), (e), (f) and (g) of § 230.144, or (2) such person or party is not affiliated with the

reasonable time after the filing of such notice.

(j) *Non-exclusive rule.* Although this rule provides a means for reselling restricted securities and securities held by affiliates without registration, it is not the exclusive means for reselling such securities in that manner. Therefore, it does not eliminate or otherwise affect the availability of any exemption for resales under the Securities Act that a person or entity may be able to rely upon.

(k) *Termination of certain restrictions on sales of restricted securities by persons other than affiliates.* The requirements of paragraphs (e), (f) and (h) of this rule shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided the securities have been beneficially owned by the person for a period of at least three years prior to their sale. In computing the period for which securities have been beneficially owned for purposes of this provision, reference should be made to paragraph (d) of this section.

Secs. 2111, 611, 4-4, 1941, 1941, 48 Stat. 74, 75, 77, 85, secs. 201, 203, 209, 210, 48 Stat. 904, 906, 908, secs. 1-4, 6, 68 Stat. 683, 684, sec. 12, 76 Stat. 580, 84 Stat. 1480, sec. 1094(a)(2), 97 Stat. 58 (15 U.S.C. 77b(11), 77d(1), 77d-4, 77a(a), sec. 209, 59 Stat. 167, sec. 3181, 48 Stat. 75, sec. 308(a)(1), (2), (3), 63 Stat. 58, 57, secs. 2, 18, 92 Stat. 275, 962, secs. 505, 612, 701, 94 Stat. 2291, 2292, 2294 (15 U.S.C. 77b(1), 77a(a), 77a(c)); 137 FR 506, Jan. 14, 1972, as amended at 39 FR 6051, Feb. 19, 1974, 39 FR 8914, Mar. 7, 1974, 41 FR 43711, Sept. 27, 1976, 43 FR 54230, Nov. 21, 1978, 44 FR 15617, Mar. 14, 1979, 45 FR 12791, Feb. 28, 1980, 46 FR 12197, Feb. 12, 1981, 47 FR 11271, Mar. 16, 1982.

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

PRELIMINARY NOTE

Section 230.145 is designed to make available the protection provided by registration under the Securities Act of 1933, as amended, to persons who are offered securities in a business combination of the type described in paragraphs (a)(1), (2), and (3) of the rule. The thrust of the rule is that an

"offer," "offer to sell," "offer for sale," or "sale" occurs when there is submitted to security holders a plan or agreement pursuant to which such holders are required to elect, on the basis of what is in substance a new investment decision, whether to accept a new or different security in exchange for their existing security. Rule 145 embodies the Commission's determination that such transactions are subject to the registration requirements of the Act, and that the previously existing "no sale" theory of Rule 133 is no longer consistent with the statutory purposes of the Act. Rule 145 is effective for matters formally submitted for security holder vote or consent on or after January 1, 1973, except for those matters formally presented prior to that date to a governmental agency for approval, where such approval is required by law.

While Rule 133 (§ 230.133) is rescinded effective January 1, 1973, it will remain available for any transaction which, before that date, had been submitted to security holders for vote or consent, or which had been submitted formally to a governmental agency for approval where such approval was required by law. Rule 133 shall also remain available for resales of securities received by persons in any transaction for which Rule 133 was available.

In order to minimize the burdens of registration to the extent feasible, particularly for small business, the Commission has amended Form S-14 so that registration under the Securities Act may be effected through the use of the informational requirements under Regulation 14A or 14C of the Exchange Act, which are generally less burdensome than those of the Securities Act.

Transactions for which statutory exemptions under the Act, including those contained in sections 3(a)(9), (10), (11), and (12), are otherwise available are not affected by Rule 145.

Note 1: Reference is made to § 230.133a describing the prospectus delivery required in a transaction of the type referred to in § 230.145.

Note 2: A reclassification of securities covered by § 230.145 would be exempt from registration pursuant to section 3(a)(9) or (11) of the Act if the conditions of either of these sections are satisfied.

(a) *Transactions within this section.* An "offer," "offer to sell," "offer for sale," or "sale" shall be deemed to be involved, within the meaning of section 2(3) of the Act, so far as the security holders of a corporation or other person are concerned where, pursuant to statutory provisions of the jurisdiction under which such corporation or