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FEDERAL EXPRESS

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Pre-Merger Notification Office  
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Room 303  
Federal Trade Commission  
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Dear Mr. Scanlon:

I believe that yesterday you spoke with one of the other attorneys in this firm concerning the application of the Pre-Merger Notification rules with respect to a specific transaction. That attorney was unable to provide full details and it is my understanding that you requested this letter to permit you to respond.

Specifically, a group of individuals and family entities acting in concert, though not under circumstances which would constitute a bank holding company, currently own in excess of 30% of a bank holding company which wholly owns a national bank. The individuals have contracted to purchase an additional 55% of the stock of the bank holding company. The acquiring individuals, when viewed in concert, have total assets in excess of \$10,000,000 and the bank holding company, the shares of which are being acquired, has total assets in excess of \$100,000,000. The question then is whether the filing and waiting period provisions of 15 U.S.C §18a apply.

I would call your attention to subsection (c)(8) in which are listed certain provisions of federal law applicable to financial institutions and which states that the transaction is exempt provided that documentary material and information are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consumation of the

Andrew Scanlon, Esquire  
February 21, 1985  
Page Two

proposed transaction. Although the statutory provisions cited in (c)(8) are not applicable, 16 CFR §802.8(b)(1) provides in relevant part that

A merger, consolidation, purchase of assets, or acquisition which requires agency approval under 12 U.S.C. §1817(j) . . . shall be exempt from the requirements of the Act if copies of all information and documentary materials filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed acquisition."

Our clients are currently contemplating two courses of action. The first would involve a "change of control" application under 12 USC §1817(j) and, if my understanding is correct, our clients would be required to deliver copies of the Change in Control application to the Federal Trade Commission and the Assistant Attorney General. However, another possibility would, pursuant to the provisions of 12 CFR §225.42(b)(1), exempt the proposed transaction from the filing provisions so long as the shares are acquired in a specified manner. In essence, the referenced provision of the Code of Federal Regulations provides that where 25% or more of any class of voting securities has been continuously held since March 9, 1979, the acquisition of additional voting securities is deemed to fall within an exemption defined as a "grandfathered control relation." This matter has been discussed with the Federal Reserve Bank of Atlanta and formal acknowledgement of this position has been received.

While I acknowledge that the grandfathering provisions technically remove the transaction from the specific provisions of Section 802.8(b) as the transaction does not require agency approval, it would seem a rather pointless endeavor to be forced to notify the Federal Trade Commission and the Department of Justice and to delay consummation of the transaction where the primary agency charged with supervision of the institution has by its own rules acknowledged that there is no need for approval. We would presume that the fact situation discussed is so unique that the exemption provisions under the Pre-Merger Notification Rules simply did not recognize the possibility of this situation.

Andrew Scanlon, Esquire  
February 21, 1985  
Page Three

It is my understanding that you have offered to respond on an expedited basis. This would be greatly appreciated as the transaction is rapidly progressing. Again, I appreciate your cooperation and should you have any questions, please do not hesitate to contact me.

Very truly yours,

[Redacted signature]

[Redacted text]

1/27/85/T/C Scanlon [Redacted]

I explained that HSR did not recognize the group concept of POT and that the individuals should be considered separately (aggregating spouse + minor children) and further that the "grandfather" exemption did not have weight under HSR since the statute required "approval" by another agency. Mr. Berkowitz advised that they would be filing under the "Change in Control" statute with the Fed and would submit copies to FTC & DOJ.

[Handwritten signature]

[Redacted text]