

AS) *File*  
February 2, 1987

HAND DELIVER

Andrew M. Scanlan, Esquire  
Premerger Specialist  
Federal Trade Commission  
Bureau of Competition, Room 301  
6 Pennsylvania Avenue, N.W.  
Washington, D.C. 20850

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Dear Mr. Scanlan:

As we discussed in Thursday afternoon's telephone conversation, I would like to confirm your advice regarding the application of the exemption set forth in Subsection (c)(2) of Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 15 U.S.C. Section 18A (the "Act") to the situation described below relating to the purchase of a portfolio of accounts receivable and chattel paper by a finance company which will thereafter provide related wholesale financing. This transaction is described in more detail below.

Our client, who is an equipment manufacturer (the "Equipment Manufacturer") which distributes its products through a nationwide network of dealers (the "Dealers"), sponsors a program under which it offers to finance sales of its products to the Dealers. The Equipment Manufacturer retains a security interest in all products which it finances and with respect to which the purchase price is unpaid. Historically, the Equipment Manufacturer has used a number of methods to finance these accounts receivable, including secured loans and sales of the dealer receivables to finance companies.

Approximately eighteen months ago the Equipment Manufacturer sold its accumulated portfolio of accounts receivable and chattel paper to Finance Company "A". At that

time the portfolio was valued at well under \$15,000,000. The sale to Finance Company "A" was part of an arrangement pursuant to which Finance Company "A" would provide ongoing wholesale financing to the Dealers through the periodic purchase of the Dealer receivables from the Equipment Manufacturer. As a result of this continuing arrangement the portfolio of accounts receivable and chattel paper has now increased to over \$15,000,000.

The Equipment Manufacturer desires to terminate its existing arrangement with Finance Company "A" and initiate a similar relationship with Finance Company "B". In order to do this, the existing portfolio is to be sold to Finance Company "B" and Finance Company "B" will thereafter offer wholesale financing to the Dealers. Initially this arrangement will be implemented through the continued purchases of the Dealer receivables from the Equipment Manufacturer, but later it is expected that Finance Company "B" will offer financing directly to the Dealers without utilizing the Equipment Manufacturer as an intermediary. The Equipment Manufacturer has and will continue to subsidize the wholesale financing costs for the benefit of the Dealers.

The transfer of the existing portfolio to Finance Company "B" can be accomplished in either of two ways: the Equipment Manufacturer can repurchase the portfolio from Finance Company "A" pursuant to the terms of the existing contract between them, and then immediately resell the portfolio to Finance Company "B", or, in the alternative, the Equipment Manufacturer can arrange for Finance Company "A" to sell the portfolio directly to Finance Company "B". The terms of the sale and the terms of the subsequent wholesale financing arrangements would be negotiated among the three parties involved.

Both Finance Company "A" and Finance Company "B" are in the business of providing wholesale and retail credit and both frequently engage in transactions similar to that which is described above. The existing portfolio represents well under one-half of one percent of the assets of either company. Further, the proposed transactions are part of an ongoing financing program arising out of the ordinary course of business by the Equipment Manufacturer and in our view do not have any antitrust implications.

Based on our previous discussions, and in light of the fact that the transaction does not involve the sale of substantially all of the assets of a business, it is my understanding that you are in agreement with our conclusion that the wholesale financing transaction is entirely exempt

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under Subsection (c)(2) of the Act since it involves the sale of "other obligations which are not voting securities".

We would appreciate it if you would confirm this matter as soon as possible since all of the parties involved are anxious to proceed. Please do not hesitate to contact me if you need further elaboration on the facts described above or if you have other questions.

Thank you for your assistance.

Very truly yours,

[Redacted signature]

[Redacted]

2/9/87 T/C Scanlon [Redacted]

A Advisor [Redacted] that the two transactions described are exempt - but are exempt under C(1) rather than C(2). I explained that exemption under C(2) might lead to the conclusion that all accounts receivable are exempt which is not accurate. C(1) however treats those notes receivable as assets that are transferred in the ordinary course of business

Paul  
2/9/87

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