

APR 16 1988
Section 7A (b) of the Freedom of Information Act

Via Federal Express

Mr. Patrick Sharpe
Federal Trade Commission
Premerger Notification Office
Sixth and Pennsylvania Avenue, Room 303
Washington, D.C. 20580

Dear Mr. Sharpe:

This letter is to confirm our telephone conversations of March 30, 1988 and April 1, 1988 regarding the following interpretation of the Federal Trade Commission's Premerger Rules pursuant to the Hart-Scott-Rodino Act. The following interpretation concerns exemption from filing of an otherwise covered transaction where such transaction involves an acquisition of collateral or receivables in a bona fide credit transaction in the ordinary course of business and where such exemption is based on Premerger Rule §802.63. The facts surrounding the proposed transaction, as explained to you on March 30, 1988, are as follows:

Company A, or its affiliate, manufactures, finances dealers, and is directly or indirectly involved in leasing of, consumer durables. Company B is currently a dealer whose inventory is financed by Company A in the ordinary course of business. When Company B leases a consumer durable to an ultimate customer, Company A refinances the inventory loan to Company B with respect to that consumer durable by having Company B issue a new term note. This term note is usually coincident with the term of the consumer lease. Thus, Company B receives a stream of rentals from the consumer while at the same time Company B pays on a term note to Company A. Company A retains a security interest in the consumer durable at all times. These are primarily closed-end leases. At the end of the lease, Company B, who has maintained title throughout the term of the lease, receives possession of the consumer durable. Company B then may dispose of the consumer durable, possibly making a profit.

Company A intends to restructure its financing arrangements with Company B with respect to outstanding leases at a specified date in the following fashion. Company A will purchase Company B's leasing portfolio. The approximate purchase price is \$50 million. The purchase price consists primarily of cancellation of over \$42 million in term notes previously


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April 6, 1988
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issued by Company B to finance the leases. Additional consideration of approximately \$8 million (net of customer security deposits of approximately \$3 million) will be paid to Company B which, in essence, is Company B's profit from the residual value of the underlying assets and Company B's profit from the income stream of lease payments less term note payments. Company B will continue to service the leases. Company B will be at risk for any shortfalls and defaults as it was before pursuant to the recourse provisions in the transaction described above. As a result of the proposed transaction, Company A will receive title to the consumer goods, in replacement of its security interest.

After Company A acquires this portfolio of leases from Company B, Company B will continue to lease on an ongoing basis to final consumers. Company A anticipates that Company B will accumulate new leases until such time as it desires to refinance the next lease portfolio in the same fashion described here.

Company A uses an alternative method of financing which could have been used with Company B initially. Company A chose not to use this alternative for efficiency reasons. A dealer would purchase the consumer durable from Company A, with Company A financing its inventory and maintaining a security interest in the consumer durable. The dealer would then arrange a lease for a consumer durable to a consumer whereby Company A would finance the actual purchase of the consumer durable from the dealer and Company A retakes title (not merely a security interest) in the consumer durable. Company A is the lessor. The dealer (or Company A) would service the lease and would be at risk for any shortfalls. The dealer would not have title nor a security interest in the consumer durable. The effect of this transaction is the same as that proposed above, but is one lease at a time versus allowing the lease portfolio to build up for refinancing on a periodic basis.

We believe that the proposed transaction is exempt from filing as an acquisition of collateral or receivable in a bona fide credit transaction in the ordinary course of business as provided for by §802.63. You indicated in our telephone call of April 1, 1988 that, after consultation with other personnel, you agree that the above transaction is exempt.

If the foregoing does not comport with your views, please notify me by April 11, 1988. If I do not receive any notification by that date, I will assume that the foregoing represents your views of the proper interpretation of the Hart-Scott-Rodino Act and Premerger Notification Rules under these facts.



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4-14-88
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