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[REDACTED]

December 8, 1989

By Telecopier

Lynn Guelzow (202-326-2050)  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C.

Dear Ms. Guelzow:

As I mentioned in our telephone conversation yesterday, I thought that it might be helpful for me to explain in a follow-up letter why I remain convinced that the transaction described in my letter to you of December 6 should be entitled to the exemption described in Section 7a(c)(11) of the statute ("subsection 11"). For purposes of these further discussions, we should set aside the possibility of exempting the transaction under Rule 802.63. The remaining issue, then, is whether the statutory exemption applies.

I believe that our only disagreement lies in whether the proposed transaction is an "ordinary course of business" transaction. I did not understand you to disagree that the transaction described in my earlier letter would be (1) an acquisition solely for the purpose of investment, (2) by a bank (you agreed that an acquisition by a bank's wholly-owned subsidiary would be viewed as a bank acquisition for purposes of subsection 11), (3) of assets in the course of its business. As I understand your position, though, you thought that our claim to the statutory exemption faltered because our client was transferring substantially all of its lease financings, and such a transaction would be, by definition, extraordinary.

Unlike other parts of the statute, subsection 11 specifically evaluates "ordinary" only from the perspective of the buyer (exempting a bank's investment acquisitions made "in the ordinary course of its business"). You suggested that it was never in the ordinary course of a buyer's business to buy all or substantially all of a seller's assets, even where the transaction is otherwise identical to transactions routinely engaged in by the buyer. I believe that such an interpretation is incorrect because it reads out of existence the statutory term "its". To require that a transaction be

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"ordinary" for the seller in order to be "ordinary" for the buyer would significantly narrow the exemption in subsection 11, in clear disregard of the unequivocal statutory language to the contrary.

If you can direct me to some authority which you believe upholds your position I will certainly study it. I look forward to discussing these issues further with you, and would appreciate it if you would give me a call after you have given these issues further thought.

Very truly yours

TDS:dfs

called 12-12-89  
Transaction is not  
exempt - bank is not  
buying for "investment  
only" when buying all  
of the assets of a line  
of business from a  
competitor -  
Z. Guelzow  
John Spole concurs

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bcc:

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