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April 27, 1992

FEDERAL EXPRESS

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, DC 20580

Attention: Richard Smith

Dear Mr. Smith:

As I discussed with you last week and today, we would like an opinion as to whether a proposed transaction in which we are involved is exempt under Section 7A of the Clayton Act, 15 U.S.C. 18A, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act").

The proposed transaction involves two companies engaged in the lease financing business. Company "A", which has an ultimate parent entity with total assets in excess of \$100 million, is proposing to acquire a portfolio of leases for a purchase price of approximately \$20 million, from Company "B", which has an ultimate parent entity with total assets in excess of \$10 million. Additionally, the proposed transaction would require Company "A" to share a percentage of the payments it receives from the lessees with Company "B" after Company "A" earns a certain amount.

The exemption under the Act which we believe is applicable is Section 7A(c)(1), the acquisition of goods transferred in the ordinary course of business. As we discussed,

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the six factors which must be analyzed are those set forth in the commentary to Item 25 of the American Bar Association's Premarmer Notification Practice Manual (1991 edition). The following are the facts relating to each of these factors:

1. Whether the assets are subject to a bona fide lease financing arrangement:

The great majority of the transactions covered by the portfolio of leases which is the subject of the proposed acquisition are finance leases or installment sale obligations where the value of the underlying assets are negligible at the end of the lease term rather than "true leases" where the underlying assets have a significant residual value at the end of the lease term. The portfolio of leases has an aggregate balance of contract receivables of approximately \$40 million while the total residual value of the underlying assets is only approximately \$800,000. Additionally, it should be noted that more than 90% of the 120 transactions covered by the portfolio are finance leases or installment sale obligations.

2. Whether operational or managerial control of the leased assets will change as a result of the acquisition:

The lessees of the underlying assets will possess the same control over those assets after the proposed acquisition as they did prior to such acquisition. The only change will be the entity to which the lessees make their lease payments.

3. Whether the assets are subject to a long-term lease or a lease that is renewable at the option of the lessee:

The underlying assets, which are primarily [REDACTED] are subject to leases with terms of 8 to 10 years, which is an industry standard for this type of asset. The average remaining term of the leases is 5 years. The finance leases or installment sale obligations do not have renewal options since the lessee typically has the option to purchase the leased asset for \$1. The few "true leases" typically provide the lessee with a renewal option.

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4. Whether the acquiror is a competitor of the lessee:

Company "A", a newly formed subsidiary of a company engaged in lease financing, is not a competitor of the lessees of the underlying assets. Additionally, neither the ultimate parent entity of Company "A" nor any of the other entities within the ultimate parent entity are competitors of the lessees.

5. Whether the lessor, or seller, is selling all or substantially all of its assets or all or substantially all of the assets of an entity or a division:


Company "B", the lessor/seller, is proposing to sell a portfolio of leases with a net investment value of approximately \$30 million of its total holdings of leases which have a net investment value of approximately \$400 million. Unlike the facts set forth in the interpretation and discussion under Item 25 of the Premarmer Notification Practice Manual, the proposed transaction does not involve the seller/lessor setting up a separate subsidiary to sell the portfolio of leases.

6. Whether the transaction is purely financial in nature:

The proposed transaction involves essentially the purchase by Company "A" of receivables owned by Company "B". The purchase price along with the sharing of lease payments above a certain amount is simply the value attributed to the future cash flow from the leases comprising the portfolio to be sold.

We believe that the analysis of the six factors set forth above leads to the conclusion that the proposed acquisition with which we are concerned would be exempt under the Act. The transaction is simply a financing arrangement involving a relatively small percentage of a lease financing company's holdings which, we believe, should be viewed as occurring in the ordinary course of business.

We would greatly appreciate your opinion as to whether we have correctly interpreted the Act, given the facts of our transaction, in concluding that the proposed transaction is



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exempt from filing under the Act. Since the timing for this proposed acquisition is relatively soon, we would appreciate a response as soon as possible.

If you have any questions, or require any additional information in order to respond to this request, please give me a call at [REDACTED]

Thank you again for your assistance.

Very truly yours,

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