

7A(c)(1); 802.1(b)

PS

[REDACTED]

March 28, 1994

MAR 28 2:47 PM '94

FEDERAL TRADE
COMMISSION
PREMERGER NOTIFICATION
OFFICE

BY HAND

Mr. Richard B. Smith
The Premerger Notification
Bureau of Competition
Federal Trade Commission
Room 303
Washington, D.C. 20580

This material may be subject to the
confidentiality provisions of Section
5(b)(1) of the Clayton Act which restricts
release under the Freedom of Information
Act.

Re: Exemption Under the Hart-Scott-Rodino
Antitrust Improvements Act of 1976

Dear Mr. Smith:

In accordance with our telephone conversation on March 24, 1994, we are writing to confirm the staff's oral advice, based on information furnished by us to the staff during that conversation, that the transaction described below (the "Transaction") would be exempt from the premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act").

Our client (the "Bank") is a federally-chartered, federally-insured stock savings bank with total assets of approximately \$5.1 billion at December 31, 1993. The Bank maintains a nationwide VISA® and MasterCard® credit card program with approximately 890,000 accounts and total receivables (consisting of account balances, finance charges and other charges), including receivables securitized, sold and serviced by the Bank, of approximately \$1.7 billion at December 31, 1993. Through its credit card program, the Bank offers both standard and premium credit card accounts.

Based on figures published by VISA U.S.A., Inc. and MasterCard International Inc., there were over 188 million VISA and MasterCard credit card accounts, with total receivables of approximately \$189 billion, in circulation nationally at September 30, 1993.

The Bank proposes to sell to another bank approximately 30,000 VISA and MasterCard credit card accounts with total receivables of approximately \$100 million at the time of sale (the "Accounts to be Sold"). The Accounts to be Sold will

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include both standard and premium credit card accounts. They will be selected from a qualifying pool of accounts meeting specified credit and other criteria of cardholders in numerous states in the continental United States. The qualifying pool of accounts was randomly selected from the included states.

The Transaction represents the sale of approximately 6% of Bank total credit card portfolio, measured by the receivables balances of the Accounts to be Sold. The Bank will not withdraw from any market for its credit card operations as a result of the Transaction, nor will the Transaction constitute a stage in a contemplated withdrawal from any such market. Following the Transaction, the Bank will continue to manage the accounts of its existing cardholders and will continue to solicit or accept new standard and premium credit card accounts in all of the states in which the cardholders of the Accounts to be Sold reside. We note that the Bank previously sold credit card accounts in transactions that were consummated in 1989, 1990 and 1991.

Based on the foregoing, we believe that the Transaction does not represent the sale of a "business" or of "substantially all of the assets of . . . an operating division" of a business within the meaning of 16 C.F.R. § 802.1(b). We believe the Transaction constitutes a transfer of assets "in the ordinary course of business" and therefore is exempt under Section 7A(c)(1) of the HSR Act from the premerger notification requirements under the HSR Act.

We understand from our telephone conversation with the staff on March 24, 1994, that, based on the facts of the Transaction as set forth in this letter, the staff concurs with the foregoing interpretation of the HSR Act. Unless we receive a contrary indication from the staff following its receipt of this letter, we will so advise the Bank.

If you have any questions regarding this matter or need any additional information, please do not hesitate to telephone the undersigned at [REDACTED]

Very truly yours,
[REDACTED]

[REDACTED] 3/29/84 advised writer that under the PMN office's treatment of accounts receivable, this transaction is non-reportable under 7A(c)(1) and 802.1(b) as a transfer in the ordinary course of business.
RBS